

# OPUS 2

## INTERNATIONAL

London Bridge Inquests

Day 34

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1 Wednesday, 26 June 2019  
 2 (10.07 am)  
 3 THE CHIEF CORONER: Good morning, Mr Hough.  
 4 MR HOUGH: Good morning, sir.  
 5 THE CHIEF CORONER: Mr Hough, before we embark on dealing  
 6 with the submissions, can I say two or three things.  
 7 First of all, can I thank everyone for the written  
 8 documents which I have received and which I have read  
 9 and I know the oral submissions will very much take as  
 10 read what is in the written work and no doubt deal with  
 11 points which have arisen after other documents were  
 12 provided. That's point one.  
 13 Point two, really, relates to tomorrow and probably  
 14 to Friday. Inevitably there is quite a lot of material  
 15 for me to cover in respect of my summary of the evidence  
 16 that's been called and obviously dealing with my  
 17 consideration and ruling on the various points which are  
 18 put in the written submissions.  
 19 What I'm planning is that we should start sitting at  
 20 9 o'clock tomorrow. I hope -- I am looking across  
 21 towards Mr Adamson who happened to catch my eye --  
 22 I hope that won't cause any difficulty to the families.  
 23 I thought I would raise it now simply because there may  
 24 be people not in court today who would like to be  
 25 present or at least know what the plan is for Thursday

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1 and Friday, so we will plan to sit starting at 9 o'clock  
 2 tomorrow. We will take breaks -- people will be  
 3 listening to my voice so it will be a welcome break to  
 4 them and a short break for me when we get to there but  
 5 I think that's probably the sensible thing to do and we  
 6 will see then how much ground I cover on Thursday and  
 7 how much ground I can cover on Friday.  
 8 Submissions by MR HOUGH QC  
 9 MR HOUGH: Sir, the purpose of submissions today is to  
 10 address the legal principles governing the  
 11 determinations you will be making in these Inquests and  
 12 how they apply to the facts. We, from our independent  
 13 perspective, have provided detailed written submissions  
 14 with extensive reference to the authorities and  
 15 evidence. Interested persons with an interest have  
 16 mainly done likewise.  
 17 What I will do now is to summarise our submissions  
 18 and address some of the main points where issue has been  
 19 taken by interested persons. I shall deal first with  
 20 legal principles governing inquest determinations, then  
 21 with legal principles governing Article 2 substantive  
 22 duties, then I will address the pre-attack  
 23 investigation, Article 2 engagement and conclusions.  
 24 Fourthly, I shall address protective security on  
 25 London Bridge, Article 2 engagement and conclusions, and

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1 fifthly, the determinations we have put forward for your  
 2 consideration. I hope that is convenient.  
 3 Dealing, then, with legal principles on inquest  
 4 determinations. The principles governing the  
 5 determinations you may consider are not, in general,  
 6 controversial. Under section 10 of the Coroners and  
 7 Justice Act 2009 you are required for each of those who  
 8 died to make a determination as to four factual  
 9 questions: who the deceased person was and how, when and  
 10 where he or she came by his or her death. You are  
 11 obliged to record the determination using a Record of  
 12 Inquest form.  
 13 In these Inquests, as in most, the critical question  
 14 is how each person died. In most inquests that question  
 15 is taken as meaning by what means the person died, which  
 16 is a question focused on the immediate means of death,  
 17 excluding broader circumstances, and excluding  
 18 underlying and contributory factors. That "by what  
 19 means" question can be answered by a choice between  
 20 short form verdicts, such as unlawful killing, accident  
 21 and so on, or by a short factual narrative of the means  
 22 of death, or by a combination of the two.  
 23 The picture has been complicated by the  
 24 incorporation into domestic law of the European  
 25 Convention on Human Rights. Article 2 of the

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1 Convention, the right to life, includes a procedural  
 2 element which, among other requirements, obliges Member  
 3 States to institute independent investigations into  
 4 certain kinds of deaths which meet convention standards,  
 5 including a standard of effectiveness.  
 6 In the Middleton case the House of Lords decided  
 7 that where that procedural obligation was engaged in  
 8 relation to a death, a modified approach to inquest  
 9 proceedings was required. In such cases, the question  
 10 of how the person died should be taken as meaning by  
 11 what means and in what circumstances the person died.  
 12 The result is that, where Article 2 is engaged in that  
 13 sense, the inquest determination can extend to include  
 14 wider circumstances of death and to underlying and  
 15 contributory factors. To address that broader question,  
 16 an expanded and more judgemental form of narrative  
 17 conclusion will often be appropriate.  
 18 I should stress that this question whether Article 2  
 19 is engaged will usually have little or no relevance to  
 20 the scope or rigour of the inquest, as the courts have  
 21 repeatedly said, for example, the Court of Appeal in the  
 22 Sreedharan case at paragraph 18. Its effect is usually  
 23 limited to the approach to determinations.  
 24 As to when Article 2 is engaged in an inquest, and  
 25 setting aside some categories of case where it is

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1 automatically engaged, none of which applies here, it's  
2 engaged where it is arguable on the evidence that the  
3 State or its agents have breached one or more of the  
4 substantive Article 2 duties, whether duties to protect  
5 life or not to take life without justification .

6 There is some modest debate before you, sir , about  
7 what threshold the word "arguable" implies. At  
8 paragraph 6(d) of our submissions we have cited the one  
9 judicial dictum really addressing that point, the  
10 comment of Mr Justice Hickinbottom in the AP case where  
11 he said that it required an argument that was stronger  
12 than fanciful .

13 The Secretary of State suggests at paragraph 26 in  
14 Sir James Eadie and Neil Sheldon's submissions that that  
15 formulation is not quite right and that the test is  
16 whether there is a prima facie case, adopting language  
17 from the Ekinci judgment of the European Court of Human  
18 Rights.

19 In our submission there is little , if any,  
20 difference between the two formulations. What is  
21 tolerably clear is that the threshold is low. It has to  
22 be capable of being applied to an initial body of  
23 evidence to determine whether an investigation  
24 satisfying the Convention standards is required at all  
25 before the investigation has actually commenced and that

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1 is the reason why it is a low threshold.

2 Of course, to say that it is arguable on a set of  
3 facts -- estate agents breached the operational duty --  
4 is not to say that criticisms of those agents are  
5 ultimately justified .

6 It is common ground that if in respect of any  
7 particular deceased person you conclude that Article 2  
8 is engaged, the modified approach outlined in the  
9 Middleton case applies for all purposes in respect of  
10 that person's inquest determination. If, for example,  
11 you say that Article 2 is engaged by reference to the  
12 conduct of a particular state body, you need not  
13 necessarily limit your broader conclusions only to the  
14 conduct of that body, see paragraph 6(f) of our  
15 submissions.

16 At paragraph 9 of our document, from page 11 to  
17 page 14, we've set out the case law governing how  
18 narrative conclusions should be expressed if you find  
19 that Article 2 is engaged on any basis for a particular  
20 person. Those, at least , are uncontroversial. The  
21 narrative should consist of judgemental factual  
22 conclusions on the key issues. It need not be, and  
23 often should not be, purely neutral in tone. It may  
24 refer to failings . It may extend to circumstances  
25 surrounding the death, even if it's only possible rather

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1 than probable that they played a part in the death. It  
2 should be focused on the death in question. It should  
3 avoid addressing questions of high policy. It should  
4 avoid excessive length and complexity.

5 Sir , may I then turn to legal principles governing  
6 substantive duties under Article 2. Because it's  
7 necessary to ask whether one or more Article 2  
8 substantive duties were breached in respect of each of  
9 the deaths, it is also necessary to consider the content  
10 of those duties. Article 2 imposes a negative  
11 obligation on states not to take life , save in certain  
12 situations . That duty is not at issue here.

13 It also imposes two types of positive obligation to  
14 protect life : a general duty on the State to have in  
15 place systems which protect life , and the operational  
16 duty which obliges State agents to take action to  
17 protect life , in certain circumstances, and in  
18 accordance with a legal test. I shall address each kind  
19 of duty in turn.

20 The general duty was characterised by Lord Bingham  
21 in Middleton, our paragraph 8(b), as being:

22 "To establish a framework of laws, precautions,  
23 procedures and means of enforcement which will, to the  
24 greatest extent reasonably possible, protect life ".

25 In cases such Oneryildiz and Budayeva this has been

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1 found to require effective regulatory and safety systems  
2 to protect against environmental risks In cases such as  
3 Kakoulli and Makaratzis, it has been found to require  
4 effective systems for planning and controlling the risk  
5 of police operations.

6 In the healthcare context, in cases reviewed in your  
7 own recent Parkinson judgment, it had been held to  
8 require proper systems and practices of governance in  
9 hospitals. The suggestion has been made in the  
10 submissions of the Secretary of State, Ms Leek  
11 paragraph 9, and in the submissions of the City of  
12 London Police, paragraph 4.7, that where people are at  
13 risk from criminal or terrorist acts, the general duty  
14 is absolutely satisfied by having proper law enforcement  
15 apparatus. In other words, it could not be a breach of  
16 the general duty for the State to have inadequate  
17 systems to establish physical protective security  
18 measures. At least that is how we understand the point.

19 If we do understand it correctly , we would  
20 respectfully disagree. The European Court of Human  
21 Rights has never expressly set such a limit on the  
22 application of a general duty, nor excluded its  
23 application to protective security. In the cases where  
24 the courts have spoken of the duty being satisfied by  
25 a law enforcement system, they have been considering

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1 either, as in Van Colle and Osman, the substantive duty  
2 in the context of preventing acts of crime, or as in  
3 cases such as Humberstone and NM, the procedural aspect  
4 of the Article 2 duty.

5 It would be bizarre, we suggest, in the context of  
6 a broadly framed and developing Convention duty of this  
7 kind to say that it could not in principle require  
8 systems to be put in place governing protective security  
9 against terrorism. In principle, we would submit,  
10 a terrorist threat to a place or kinds of places may be  
11 as serious and as foreseeable as an environmental risk  
12 or risks from police operations.

13 There is no suggestion that within the Article 2  
14 general duty, enclaves are carved out which would  
15 prevent the duty being developed in the way that we  
16 would suggest.

17 In the application of the general duty, we would, of  
18 course, agree with the submission of the Secretary of  
19 State that it should take proper account of resources  
20 and that it should not be coloured by hindsight.

21 Let me turn, then, to the operational duty. That  
22 duty was first established in the Osman decision of the  
23 European Court of Human Rights and the test articulated  
24 in that case is cited in various of the submissions,  
25 quoted in ours at paragraph 8(e). In its original form

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1 it required first of all that the authorities knew or  
2 ought to have known at the time of the existence of  
3 a real and immediate risk to the life of an individual  
4 or individuals from the criminal acts of a third party.  
5 It required also that they should have failed to take  
6 measures within the scope of their powers and, finally,  
7 it required that those measures, judged reasonably,  
8 might have been expected to avoid the risk.

9 In this test, a real risk is one that is not remote  
10 or fanciful. An immediate risk is one that is present  
11 and continuing, that is to say not necessarily one that  
12 is sudden or topical. Although some authorities  
13 describe it as a high test, Lord Bingham in Van Colle at  
14 paragraph 30 suggested that it required no such gloss.  
15 As we understand, it is common ground that the Osman  
16 duty has been extended over recent years to encompass  
17 an obligation to protect society in general against the  
18 potential acts of one or more persons. We have cited  
19 the authorities for that proposition at paragraphs 8(j)  
20 and 8(k) of our document. We've also cited at  
21 paragraph 8(i) the case of Tagayeva in which the duty  
22 was engaged where the State knew or ought to have known  
23 of a terrorist threat which was generalised to  
24 educational facilities in a district.

25 A number of interested persons have rightly drawn

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1 attention to two matters recognised in Osman and  
2 Re Officer L. First, that the standard of reasonable  
3 action does not impose an unreasonable or  
4 disproportionate burden on the authorities and,  
5 secondly, that it requires a view to be taken based on  
6 what the authorities knew or ought to have known at the  
7 time rather than one informed by full hindsight.

8 On the balance of the authorities, what State  
9 authorities ought to have known, we submit, includes  
10 what they should have discovered by inquiries any  
11 reasonable person in their position ought to have made,  
12 as the Metropolitan Police Service recognises at  
13 paragraph 10(f) of its submissions.

14 That was the view of Lord Bingham in Van Colle,  
15 paragraph 32, with whom Lords Carswell and Brown agreed  
16 generally. It was also a view supported by  
17 Mr Justice Silber in the Medihani case.

18 Finally in respect of the operational duty, proving  
19 a breach does not require proof that the appropriate  
20 action probably would have saved life. It is enough  
21 that the deceased lost a substantial chance of  
22 surviving, Van Colle at paragraph 138, Lord Brown.

23 Before moving to the application of the Article 2  
24 duties in this case, let me make three preliminary  
25 observations: first, we appreciate that you have not, to

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1 date, concluded that Article 2 is engaged. Your  
2 approach has been to keep the issue under review. While  
3 in many cases the issue can be resolved early in the  
4 preparation for an inquest, it's been sensible to  
5 address it in detail at this stage in these inquests.  
6 The court is now much better informed about matters such  
7 as the pre-attack investigation and protective security  
8 procedures. It was not necessary to address Article 2  
9 engagement in detail before now, primarily because the  
10 scope and procedure of the Inquest have, on any view,  
11 been sufficient to comply with the requirements of the  
12 Article 2 jurisprudence. For those reasons, nobody  
13 suggests that you cannot or should not grapple with the  
14 Article 2 issues at this point.

15 Secondly, we would stress that the effect of  
16 Article 2 being engaged must not be overstated. The  
17 issue may absorb much interest and enthusiasm today, but  
18 it has not affected the extremely rigorous approach of  
19 the inquiry. Furthermore, as Ms Barton rightly submits,  
20 you will express your views, come what may, in  
21 a detailed summing-up of the evidence and the facts.

22 In addition, whatever the decision on Article 2,  
23 there would be scope to consider lessons to be learned  
24 through a Prevention of Future Deaths Report.

25 Thirdly, we are focusing on certain aspects of the

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1 case which may justify Article 2 engagement in the  
2 comments in any narrative. That is not to deny the  
3 significance of other features in the evidence and  
4 I stress that point in particular because I appreciate  
5 that there will be matters in the evidence of great  
6 concern, for example, to the families that don't occupy  
7 much of the argument today.

8 May I then turn to the pre-attack investigation,  
9 Article 2 engagement and conclusions. In our  
10 submission, Article 2 is engaged in respect of all the  
11 victims of the attack on the basis of an arguable -- we  
12 stress arguable -- breach by the authorities in respect  
13 of the pre-attack investigation. The way we put the  
14 argument is as follows, in our paragraph 14: it is  
15 arguable that State agencies knew or ought to have known  
16 of a real and immediate risk to the public from the  
17 attackers and that they failed to take measures which,  
18 judged reasonably, might have been expected to avoid  
19 that risk.

20 The stages of the argument are threefold: first,  
21 that investigative opportunities were arguably missed,  
22 especially in the early part of 2017; secondly, that  
23 arguably had they been taken and the risk posed by Butt  
24 taken sufficiently seriously, there would have been  
25 additional monitoring which would have revealed his

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1 actions on the day; and, thirdly, that appropriate  
2 action in response might reasonably have been expected  
3 to prevent the attack through a stop of the van, once  
4 again at the level of an arguable case.

5 We only submit that this provides an arguable or  
6 prima facie case. As we shall go on to say we do not  
7 ultimately accept that criticisms should be made of the  
8 MI5 investigation.

9 Let me take the stages of the argument in turn.  
10 Looking firstly at paragraph 15. First, it may be  
11 argued that prior to 2017, the authorities did not give  
12 sufficient weight to the threat posed by Butt. There  
13 had been a growth of low sophistication attacks but it  
14 is arguable that the potential lone actor assessments of  
15 Butt were unconvincing, in particular, identifying  
16 a weak capability in September 2015 and reduced intent  
17 in October 2016.

18 While Witness L said that these did not  
19 substantially affect investigative action, they were  
20 intended, and no doubt used, as aids for the operational  
21 team. They also arguably reflect upon the overall  
22 approach to assessing Butt as a risk.

23 The electronic media reviewed in October 2016  
24 arguably cast a new light on Butt: someone in touch with  
25 a radical preacher, viewing extensive Islamic State

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1 propaganda, and delighting in slashing the throat of  
2 a cow whilst comparing it to a man. Yet Witness L said  
3 it did not affect MI5's view of the risk he posed. It  
4 is fairly arguable that there were risk factors which  
5 justified Butt being taken as seriously as ever by early  
6 2017, rather than being progressively deprioritised and  
7 considered for closure.

8 First, the original intelligence of attack  
9 aspiration, later confirmed; secondly, his plans to  
10 fight with Islamic State in 2016, which might have been  
11 further elaborated if contact with Usman Darr had been  
12 followed up; thirdly, persistent links to ALM,  
13 an inflammatory influence within ALM and increasing  
14 rhetoric; fourth, a history of violence, including  
15 spontaneous violence, and; fifth, an absence of any  
16 employment of significance and a daily routine not fully  
17 understood by the Service.

18 Turning to paragraph 17 and early 2017, it is fairly  
19 arguable that a number of investigative opportunities  
20 were missed in that period and that the evidence has  
21 revealed blind spots in the monitoring. In summary,  
22 first of all, not treating the gym as a significant  
23 investigative priority, despite it being a focal point  
24 of Butt's life and routine was, arguably, a missed  
25 opportunity. This is important as it was apparently

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1 where he met Zaghba and Redouane and where at least one  
2 meeting to plan the attack started; that is to say on  
3 29 May.

4 Secondly, the limited and ineffective attempts to  
5 discover the Ad-Deen school where Butt had been  
6 teaching, which would have helped in identifying  
7 Youssef Zaghba and seeing him as a significant  
8 associate. The association of Shahid, a person with  
9 significant extremist pedigree with both the gym and the  
10 school, which was known to MI5, should arguably have  
11 made the identification of the school easier and also  
12 raised its profile.

13 Thirdly, the failure to identify Redouane and Zaghba  
14 since they had been in regular telephone contact with  
15 Butt and saw him reasonably regularly stands out as  
16 a stark point.

17 Fourthly, the failure to attach more significance to  
18 those attending the meetings of 7 March 2017, especially  
19 that at the gym where Butt was being careful about what  
20 he said and appeared to be making efforts to obtain  
21 an item, was an example and one which was accepted as  
22 an area which could have been investigated further.

23 Against that background, we say it's fairly arguable  
24 that a greater level of surveillance should have been  
25 applied to Butt in the days leading up to the attack and

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1 on the day of the attack. In particular, it may fairly  
2 be argued that the apparent blind spots in the  
3 understanding of Butt's routine and associates combined  
4 with the recent suspension of the investigation should  
5 have led to a period of focused coverage in the weeks  
6 following the unsuspension. We accept that that would  
7 have been resource-intensive, however, it cannot be said  
8 that Butt was in principle not suitable for intense  
9 monitoring as Witness L said that this had been arranged  
10 on at least one weekday.

11 Furthermore, it's likely that Butt had some covert  
12 meetings with the other attackers, given the logistics  
13 of the plan, identifying just one of those or any  
14 example of the anti-surveillance behaviour we saw on  
15 29 May may have led to more intense monitoring.

16 Equally, the identification of Zaghba and Redouane  
17 might very well have picked up further signs of their  
18 preparations for the attack, given that all the  
19 paraphernalia was likely put together at their homes.

20 The next stage is to ask whether it is arguable that  
21 had further surveillance been in place on the day of the  
22 attack it would have alerted the authorities to Butt and  
23 his associates posing a real and immediate risk to the  
24 lives of the public. In our submission, that is  
25 an arguable proposition. Witness L gave evidence of a

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1 number of investigative tools which logically might have  
2 alerted the authorities to Butt's attempts to hire a van  
3 with associates and possibly their peculiar purchase of  
4 large amounts of gravel. Monitoring of Butt's car would  
5 have allowed them to have tracked key movements of the  
6 attackers on the day, including that to B&Q. Monitoring  
7 of his calls would have alerted them to the call to  
8 Hertz at B&Q since it was made with his regular phone.  
9 Human surveillance would similarly have identified the  
10 van hire.

11 The final stage is to ask whether it is arguable  
12 that information as to the van hire and possibly the  
13 gravel purchase should have indicated a real and  
14 immediate risk of an attack, triggering a stop of the  
15 van. Again, we submit that that is an arguable  
16 proposition. Witness M said that he would have been  
17 inclined to stop the van and that that response was  
18 conditioned by what he knew about vehicle-as-weapon  
19 attacks.

20 Witness L said he doubted the information would have  
21 even been communicated to the police, but that is not  
22 an end of the matter. First of all, it is at least  
23 arguable that MI5 would or should have passed on  
24 information about an unexpected van hire and/or the odd  
25 purchase of gravel. This was, after all,

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1 a collaborative investigation in which members of the  
2 two teams were in touch very regularly.

3 Secondly, Witness L, for all his great experience,  
4 was not the case officer, and his evidence on this point  
5 was necessarily based on assumptions of what approach  
6 would have been taken by others.

7 Thirdly, Witness L assumed that the case officer  
8 would have learned of the house move cover story and,  
9 furthermore, would have accepted it uncritically.  
10 Neither assumption is obvious or beyond argument.

11 Having made all those points as to why there is  
12 an arguable breach of the Article 2 duty, let me now  
13 turn position somewhat and explain why we say that the  
14 narrative conclusion ought not to criticise a pre-attack  
15 investigation, Operation Hawthorn, and we address this  
16 at paragraph 24 of our document, and here we distinguish  
17 between what is arguable and what should ultimately be  
18 accepted.

19 First of all, Witnesses L and M have described  
20 an operation which was thorough and involved extensive  
21 coverage over a period of time. Despite the fact that  
22 Butt had not shown any evidence of attack planning over  
23 a two-year period, he was always treated as the main  
24 subject of interest and always within a P2  
25 investigation.

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1 Furthermore, it's telling that the MI5 team learned  
2 nearly all of the facts relevant to the risk Butt posed,  
3 even when assessed against the results of the  
4 post-attack investigation. They learned his original  
5 attack aspiration; his association with ALM figures,  
6 including periods of engagement and disengagement; his  
7 intention to fight with IS and possible plans for  
8 legitimate travel; his accessing and sharing of  
9 extremist material; his involvement with the Regent's  
10 Park rally; his SIA accreditation and employment with  
11 TfL; the altercation in Goodmayes Park; the fraudulent  
12 bank fund reclaims and the regular use of the UFC gym.

13 The investigation also identified a number of the  
14 key meetings including both of those on 7 March 2017 and  
15 those on 18 April and 14 May 2017.

16 The tragic fact that attack planning was not  
17 detected can be explained by the obvious care taken by  
18 the attackers to keep any planning secret and to keep  
19 preparations away from Butt's house. Furthermore, Butt  
20 carried out the attack with two individuals unknown to  
21 MI5 which were relatively recent associates of his and  
22 that may well have been a deliberate choice on his part.

23 Secondly, Witness L gave what in our submission was  
24 a cogent explanation of the decisions about  
25 prioritisation of resources. Given the recognition by

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1 the Article 2 authorities of the need for proportion and  
2 reality in the assessment, we cannot, for example,  
3 accept that it is a breach to suspend investigations at  
4 a time when expert staff are needed to address greater  
5 threats.

6 Thirdly, while it's possible to identify steps which  
7 would have led to Redouane and Zaghba being identified,  
8 and while we can now see all dealings with them as  
9 potentially related to a lethal attack, we've got to set  
10 aside hindsight. In our submission, L's evidence that  
11 Redouane and Zaghba would probably have been seen as  
12 social associates of Butt should ultimately be accepted.  
13 We say that for three reasons: first, they were recent  
14 associates and most of their meetings with Butt were  
15 evidently social: swimming sessions with people of no  
16 extremist bent, the trip to Leeds on 18 April to buy  
17 a car, the barbecue with family and neighbours on  
18 14 May.

19 Secondly, even after scouring of CCTV in the area  
20 and all the investigations carried out by the police, by  
21 MI5 and for that matter by the media after the attack,  
22 only one meeting in the open with suspicious features  
23 has been identified: that of 29 May.

24 Thirdly, neither Redouane nor Zaghba would have been  
25 flagged as having terrorist or other criminal

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1 connections which might have coloured the authorities'  
2 view of them.

3 Next, we would say that even if it can be said that  
4 further investigative steps could or should have been  
5 taken, or that Butt's risk profile should have been  
6 higher, it's difficult to conclude ultimately that MI5  
7 should have had him under live monitoring on 3 June. As  
8 we've submitted, it's arguable that they would or should  
9 have done, but we ultimately find the argument  
10 unconvincing. In our submission, Butt's risk profile,  
11 based on the information known to MI5 before  
12 3 June 2017, did not justify continuous live monitoring  
13 or did not obviously do so.

14 Witness L explained cogently that such an approach  
15 must be reserved for those believed to be planning  
16 an attack.

17 Furthermore, we would ultimately reject the argument  
18 that further investigative steps would have revealed  
19 information such as to trigger continuous live  
20 monitoring. As I've said, the attackers were very  
21 careful to avoid being observed, for example, by holding  
22 their discussions late at night and out of view and by  
23 deploying a careful cover story for the van hire. Even  
24 after all the post-attack investigations there is no  
25 evidence that anyone other than the three of them knew

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1 the attack plan, and only fragmentary evidence that one  
2 person might have known that an attack was in prospect  
3 at some point.

4 Fifthly, even if MI5 had learned of Butt's efforts  
5 to hire a van, a criticism should only be made of the  
6 investigation if knowledge of those efforts would have  
7 caused the van to be stopped. In that regard, L gave  
8 a plausible explanation as to why an intelligence  
9 professional would not have wanted the van stopped;  
10 namely that that would have blown the investigation when  
11 the van hire had an innocent explanation.

12 Before I leave the topic of the Article 2 duty and  
13 the pre-attack investigation, may I address some  
14 submissions made by my learned friend Mr Patterson at  
15 page 23 of his document, in which you're asked to review  
16 some of the earlier decisions you've made in the light  
17 of the evidence.

18 First, you're asked to review the indicative scope  
19 ruling in which you have said the consideration of what  
20 was known to the authorities would include "some  
21 consideration" of what was known to MI5. In our  
22 submission, there is no need to review that ruling for  
23 one simple reason: the Inquests now held have considered  
24 what was known to MI5 in unprecedented detail and to the  
25 greatest extent possible in a public process with

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1 properly full involvement of the bereaved families.

2 Secondly, you're asked to consider whether the  
3 evidence calls for any additional evidential inquiries.  
4 In our submission, such inquiries are not required now.  
5 In our original review of the MI5 operational documents  
6 we identified a wide range of potentially relevant  
7 documents and we sought to identify substantially  
8 everything which could add materially to the  
9 understanding of the risk Butt posed and the  
10 investigative methods used. The evidence does not cause  
11 us therefore to say that more material should be called  
12 for.

13 Thirdly, you are asked to review the wily balancing  
14 exercise in the light of the evidence. We know that you  
15 have kept the PII judgment under review throughout this  
16 hearing. In our submission the evidence does not call  
17 for any change to it. Although we can't go into detail  
18 in an open hearing, what we can say is that the national  
19 security interest which justified the ruling was  
20 substantial and were very well and fully reasoned. The  
21 PII process was rigorous and it took account of the  
22 likely issues in the Inquests as they have eventuated.

23 Fourthly, you are asked to review the decision that  
24 the duty of inquiry under the Coroners and Justice Act,  
25 informed by Article 2 as relevant, could be satisfied by

24

1 an inquest rather than a public inquiry. In our  
 2 submission, these Inquests have shown that it has been  
 3 possible to conduct an inquiry of impressive depth and  
 4 breadth with the available material. We would add, for  
 5 the family's sake, that a public inquiry would have been  
 6 a less satisfactory process for them with probably no  
 7 public examination of MI5 or SO15 witnesses.  
 8 Furthermore, even a public inquiry would not have been  
 9 able, realistically, to examine all aspects of  
 10 intelligence monitoring or to second-guess every  
 11 intelligence judgment, and we note that the Secretary of  
 12 State supports all the points I have just made.

13 May I move on, then, to protective security on  
 14 London Bridge, Article 2 engagement and conclusions.  
 15 Addressing first the general duty: in our submission  
 16 there is an arguable case that the Article 2 general  
 17 duty was breached in the failure of the State to have in  
 18 place adequate systems for assessing the need for and  
 19 then implementing protective security measures in the  
 20 form of hostile vehicle mitigation. We address this  
 21 topic from paragraph 26 of our document, and we set out  
 22 the background in detail up to paragraph 43. I don't  
 23 propose to go over all that ground.

24 We've already explained why we say that the  
 25 Article 2 general duty requires the State to have in

25

1 place adequate systems regarding protective security  
 2 against foreseeable terrorist threats. As we set out at  
 3 paragraph 44, we say that there are four arguable  
 4 deficiencies in the systems in place up to June 2017,  
 5 and we note that none of the bodies engaged in providing  
 6 protective security on the ground positively disputes  
 7 the engagement of the general duty.

8 First, the classification of locations as  
 9 prioritised crowded places was arguably too rigid. We  
 10 stress that our criticism is not of the public-facing  
 11 definition of crowded places which is broad and pretty  
 12 anodyne. Our criticism is directed at the battery of  
 13 tests used to determine whether a place could be  
 14 a priority crowded place, that's to say in tier 1 or 2.

15 Ms Nacey of the OSCT very fairly accepted that those  
 16 tests were too rigid in various respects. First of all  
 17 in setting the crowd density threshold at a level where  
 18 London Bridge with its packed rush hour pavements could  
 19 not qualify. Secondly, in demanding that a place have  
 20 a geographic specificity and an individual point of  
 21 contact. The tests were and are important. It was  
 22 a matter of discretion, resources and capacity whether  
 23 a place other than a tier 1 or 2 crowded place would be  
 24 assessed by a CTSA.

25 On the evidence, it appears that there was no CTSA

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1 assessment of London Bridge before PC Hone was asked to  
 2 come up with a list of high-risk sites following the  
 3 Westminster Bridge attack. While the direction to make  
 4 that assessment reflects well on DAC D'Orsi and  
 5 PC Hone's assessment reflects well on him, the systems  
 6 were such that London Bridge was kept outside the  
 7 priority areas by over-rigid classifications.

8 The second arguable deficiency in the systems was  
 9 a lack of clear lines of responsibility and procedures  
 10 for ensuring that highway authorities considered the  
 11 vulnerability of key areas for which they were  
 12 responsible. In all the evidence, we have not been told  
 13 of advisory material advising highway authorities  
 14 systemically to review the risks of vehicle-as-weapon  
 15 attacks on roads under their purview. Ms Hayward and  
 16 Mr Hughes understood their role to be to react under the  
 17 guidance of the CTSA's who would be appraised of all the  
 18 intelligence.

19 It is hard to criticise them for taking that view  
 20 since other highway authorities were evidently doing the  
 21 same, yet CTSA's would not be treating roads as priority  
 22 areas precisely because of the classification in the  
 23 crowded place system.

24 The third arguable deficiency was a lack of clear  
 25 procedures for a reasonably prompt consideration of

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1 temporary and permanent HVM measures. Vehicle-as-weapon  
 2 attacks in open public spaces had been growing in number  
 3 and seriousness: Nice, Berlin, Westminster, Stockholm.  
 4 However, there was a lack of clear understanding about  
 5 how to address vulnerabilities quickly. PS Hone, a very  
 6 experienced CTSA, thought there were just two options:  
 7 permanent HVM, which would take years to implement, or  
 8 use of the National Barrier Asset for a special event or  
 9 in response to intelligence of a particular threat to  
 10 a specific place. That is why he only considered  
 11 permanent HVM and other police witnesses generally took  
 12 the same binary view.

13 In fact, there was a third option to use temporary  
 14 HVM procured privately. That was not well understood by  
 15 the policing authorities. While some witnesses referred  
 16 to the possibility of a gold group being formed at short  
 17 notice and implementing urgent temporary HVM, there was  
 18 no evidence that that was even contemplated amidst all  
 19 the warnings of the vulnerability and attractiveness of  
 20 London Bridge.

21 When HVM was installed after the London Bridge  
 22 attack, it resulted from the direct action of DAC D'Orsi  
 23 who commendably set all the rules aside.

24 May I then turn to the operational duty and I will  
 25 assess that briefly as it's an academic issue if our

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1 submissions on the general duty are accepted.  
 2 In our submission, it is not arguable that the  
 3 operational duty was breached. As regards TfL, it  
 4 cannot be said that that authority knew or ought to have  
 5 known of a real and immediate risk to users of  
 6 London Bridge, such as to require it reasonably to  
 7 install HVM prior to the attack. TfL reasonably  
 8 expected that the police would inform it of areas of  
 9 risk which required special protection against terrorist  
 10 action. It was capable of acting on such advice.

11 The same points apply, in our submission, to the  
 12 Corporation: it was first made aware of London Bridge as  
 13 a vulnerable area on 8 May 2017, at which time  
 14 Mr Woolford was specifically told, as he said, by  
 15 PS Hone, to await further advice. Even if Mr Woolford  
 16 had pressed PS Hone, he would at most have been told  
 17 that PS Hone was recommending the installation of  
 18 permanent HVM, a process taking a considerable period of  
 19 time.

20 As regards the City of London Police, we acknowledge  
 21 some of the criticisms which have been made about  
 22 communications within the force, however, there is no  
 23 basis for a finding of breach of the operational duty.  
 24 The starting point of the analysis is that Mr Hone was  
 25 rightly accepted by everyone to be expert and

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1 conscientious and to have done his job in exemplary  
 2 fashion. However, when he first aired concerns in March  
 3 2017, that was to encourage greater use of the Servator  
 4 tactic, action which was in fact taken by the City of  
 5 London Police.

6 When he next aired concerns, in mid-May 2017, it was  
 7 to urge the installation of permanent HVM, action which  
 8 would likely have been considered. Given that there is,  
 9 rightly, no criticism of him, we say it cannot be argued  
 10 that the City of London Police was required to go  
 11 further or more quickly than his recommendations.

12 Finally, for completeness, we don't accept that it's  
 13 illegitimate to address the State bodies individually in  
 14 that way. That is in general how the analysis is  
 15 performed in both our courts and in the Strasbourg  
 16 institutions.

17 May I make a further submission in relation to  
 18 a point which has been made by some of the families. In  
 19 our submission any finding of Article 2 engagement based  
 20 on protective security should be limited to the inquests  
 21 of Xavier Thomas and Christine Archibald. We do not  
 22 accept the argument that it should extend to the other  
 23 inquests on the basis that HVM measures on London Bridge  
 24 would have caused the attackers not to commence their  
 25 knife attack in the Borough area at all. That argument,

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1 we submit, respectfully, is simply too speculative. It  
 2 is based on guesswork as to the attackers' intentions.  
 3 It is conceivable that they were determined to begin  
 4 their attack with a long drive down a pavement and that  
 5 HVM on London Bridge would have caused them to go  
 6 elsewhere entirely.

7 However, it's equally possible that they were  
 8 attracted to the Borough Market area after their first  
 9 pass down Borough High Street, for example, by the sight  
 10 of numerous young people out and about in a cosmopolitan  
 11 setting.

12 They may well have driven onto the longest  
 13 unprotected section of pavement they could find or into  
 14 a convenient group of pedestrian bystanders and set off  
 15 on their knife attack in broadly the same way. Any  
 16 attempt to go beyond pure guesswork involves  
 17 psychoanalysis of the attackers, which we submit is not  
 18 realistically possible.

19 As regards what the narrative determination should  
 20 say about protective security, we submit that it should  
 21 recognise a weakness in the systems for assessing  
 22 vulnerable open spaces and installing hostile vehicle  
 23 mitigation measures. In our submission that weakness is  
 24 demonstrated, not merely arguable.

25 Beyond that we're open to the submissions of others

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1 regarding the precise form of the narrative passage we  
 2 have suggested in paragraph 63 of our document, and we  
 3 may address those in reply.

4 May I now turn to proposed determinations. First of  
 5 all, we submit that the determination for each of those  
 6 who died should begin with a short form conclusion of  
 7 unlawful killing. While much time has rightly been  
 8 taken up in these Inquests in considering whether the  
 9 attack could have been prevented or its effects  
 10 mitigated, the basic fact remains that each of the young  
 11 people who died was murdered, and murdered by  
 12 terrorists. The overwhelming responsibility for each  
 13 death rests with the attackers, and that should be  
 14 recognised in the conclusions.

15 Secondly, we submit that in each determination there  
 16 should be a narrative passage setting out the means of  
 17 death, the answer to the narrow version of the "how"  
 18 question, and that's important because it will reflect  
 19 the valuable evidence we have had which has informed  
 20 each of the families about the circumstances in which  
 21 each of their loved ones met his or her end. We've  
 22 suggested a form of words in each case, we're aware that  
 23 the families will need to consider these, and we would  
 24 be open to discussing the precise wording over the next  
 25 24 hours. We would hope that no ruling will be required

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1 and that any revisions can be agreed between ourselves  
2 and the families' teams, circulated tomorrow morning,  
3 and approved by all.

4 I should stress, however, that that process of  
5 discussion would not be intended to introduce  
6 controversial material such as implicit criticisms of  
7 others. And, for completeness, we see the force of the  
8 small amendment suggested by the LAS in relation to the  
9 passage for Christine Archibald.

10 THE CHIEF CORONER: And it may be since you started on your  
11 feet Mr Patterson and his team had submitted some  
12 proposals in respect of the draft, so I'm not going to  
13 say anything about that at this stage, Mr Hough, but  
14 certainly I echo your submissions that hopefully the  
15 wording can be agreed by sensible dialogue.

16 MR HOUGH: Our intention, and I think Mr Patterson's  
17 intention too, is to produce neutral forms of words  
18 which don't generate any controversy.

19 Thirdly in relation to determinations, as we set out  
20 at paragraph 61, we submit that there should be  
21 a passage in each narrative identifying the fact that  
22 multiple warning signs about Butt's extremist views and  
23 conduct were apparent to some of his close family  
24 members before the attack and they were not, in the  
25 main, reported. In our submission, that is

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1 a significant feature of the case and the evidence which  
2 merits being specifically recorded.

3 We would not agree, respectfully, with the  
4 submission made on behalf of Zahrah Rehman that she be  
5 specifically excluded from that rubric. There is  
6 substantial evidence of warning signs evident to her in  
7 her husband's behaviour. That said, we don't favour  
8 singling out her or specific family members in our form  
9 of words.

10 Fourthly, we submit that there should be a passage  
11 in each narrative recognising that Butt was under  
12 investigation by the Security Service and that the other  
13 attackers were not, and we set that out at paragraph 62.

14 For the reasons I've already sought to give, we  
15 would not support any additional passage adding  
16 criticisms of the MI5 investigation.

17 Fifthly, as I've said, we submit at paragraph 63  
18 that there should be a passage in the narrative  
19 determinations for Xavier Thomas and Christine Archibald  
20 concerning the lack of proper assistance for assessing  
21 the need for HVM and implementing it promptly.

22 The final substantial topic for me to address  
23 concerns LAS and the emergency response more broadly.  
24 Nobody suggests that there was any arguable breach of  
25 Article 2 duties in the conduct of the emergency

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1 response, or that there should be explicit criticism of  
2 that response in the narratives. For reasons we have  
3 given, which I understand the families accept, it is  
4 impossible to posit a faster or better organised  
5 emergency response which could realistically have saved  
6 any of those who died.

7 As regards the modified narratives, which are  
8 proposed at pages 5 and 6 of the submissions of my  
9 learned friend Mr Patterson, we would be open to  
10 amendments identifying more clearly those who provided  
11 early emergency care and recognising that they did so  
12 while in harm's way. However, we would not favour  
13 references to those assisting not having known that  
14 ambulances were close by, and I say that for two  
15 reasons: first, for most of the time that those  
16 individuals were helping and for all the time that each  
17 casualty was alive, and certainly while each casualty  
18 was capable of being saved, there were not ambulances  
19 close by.

20 Secondly, we would be wary of any change to the  
21 narratives which implicitly suggested or would be read  
22 as suggesting that the person might have been saved but  
23 for some failing in the emergency response.

24 We have, of course, heard and taken full account of  
25 the points raised by Mr Patterson in questioning LAS

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1 witnesses, and we acknowledge the real concerns he has  
2 raised. In our submission they will probably be best  
3 addressed in a Prevention of Future Deaths Report. Both  
4 Superintendent McKibbin and Mr Woodrow accepted that  
5 improvements might need to be made, for example, in  
6 communications between services and in procedures for  
7 getting care to those in dangerous areas.

8 So, sir, those are my submissions at this stage.  
9 I appreciate that I have not been able to cover every  
10 point in the substantial and helpful written submissions  
11 of others and that I have covered some with more brevity  
12 than if I had been focused on one issue in the case. If  
13 further points need to be addressed, I will propose to  
14 tackle them in reply.

15 Sir, may I assist further at this stage?

16 THE CHIEF CORONER: No, can I just again echo what I said at  
17 the beginning. Mr Hough, I have been extremely assisted  
18 had in my first thoughts on these points by your very  
19 detailed submissions that I know you and Mr Moss have  
20 worked on, they are extremely helpful, and I repeat the  
21 same for all the other written submissions I've had.

22 Thank you.

23 MR HOUGH: Thank you, sir.

24 THE CHIEF CORONER: Mr Patterson.

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1 Submissions by MR PATTERSON QC

2 MR PATTERSON: We have set out our submissions in writing in  
3 some detail. It is important that the families should  
4 know that I won't be covering on my feet everything that  
5 is dealt with in writing. I have limited time and  
6 I want to focus in particular on the investigation and  
7 the arguments as to Article 2.

8 THE CHIEF CORONER: But, again, just on that point,  
9 Mr Patterson, so the families know, I have had your  
10 extremely helpful written submissions.

11 MR PATTERSON: Yes.

12 THE CHIEF CORONER: And, perhaps more importantly rather  
13 than just having them, I have had the chance to read  
14 them and to consider the points that are made.

15 MR PATTERSON: I'm grateful, and Ms Ailes, as you have  
16 indicated, served something this morning dealing with  
17 the precise narrative wording which, again, it is  
18 important that those who I represent understand that  
19 that is being dealt with, albeit that on my feet I want  
20 to deal with Article 2.

21 Likewise in relation to barriers, we have made our  
22 points in writing. Mr Adamson and I, as you might  
23 expect, have liaised closely. He will be focusing  
24 orally in his submissions on that.

25 THE CHIEF CORONER: Yes.

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1 MR PATTERSON: May I make this important point to begin  
2 with, sir: everyone participating in these Inquests  
3 recognises that the primary responsibility for those  
4 eight tragic deaths lies with the three terrorists who  
5 committed what were brutal acts of premeditated murder,  
6 and nothing that we say should be interpreted in any way  
7 as detracting from that essential truth.

8 Terrorism, of course, is a scourge on our society  
9 and the effects of it can hardly be overstated. In  
10 a few minutes or even moments, innocent lives are  
11 viciously destroyed and in these Inquests your Lordship  
12 has met the bereaved families whose lives equally will  
13 never be the same again.

14 Although it's self-evident, it does bear publicly  
15 stating that the public themselves cannot investigate  
16 terror suspects. Within our society we pool our  
17 resources and we fund investigators to whom we give  
18 significant powers of investigation, and you, I know,  
19 are familiar with what they are empowered to do, and the  
20 MI5 Witness L listed their extensive powers that  
21 Parliament on our behalf have entrusted to them:  
22 surveillance, covert cameras, monitoring of things being  
23 said over telephones, or using listening devices and the  
24 like.

25 But the truth is, sir, that the eight young people

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1 who were killed by Butt and his accomplices relied, as  
2 we all do, on the Security Service and the counter  
3 terrorism police to keep them safe. The potential  
4 targets of the terrorists, namely we, the public, expect  
5 these investigators to do what they are resourced and  
6 empowered to do to protect the lives of the public, and  
7 the essential submission of the families to you, sir, is  
8 that sadly, the evidence does show that the  
9 investigators failed to discharge their duty. Despite  
10 the resources and the powers that they were provided  
11 with, regrettably they did not discharge their  
12 responsibility when dealing with this dangerous man,  
13 Khuram Butt.

14 Now, Counsel to the Inquests submits and indeed  
15 concedes that Article 2 is engaged in respect of each of  
16 the eight Inquests on the basis that there is  
17 an arguable breach of that duty to protect life,  
18 insufficient steps having been taken to prevent the  
19 attack. And so contrary to what is argued on behalf of  
20 MI5, Mr Hough and Mr Moss do submit that there is  
21 an arguable basis for criticism and that that argument  
22 cannot be said to be fanciful, and you have the points  
23 they make at paragraph 14 of their argument:  
24 opportunities missed, particularly in the lead-up to the  
25 attack, further investigations that should have resulted

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1 in additional monitoring, that this would have revealed  
2 the actions on the day of the attack, including the hire  
3 of the van, and that the discovery of the hiring of the  
4 van should have led to the stopping of the attackers.

5 Mr Hough lists areas in which it can be argued that  
6 the investigators didn't attach sufficient weight to  
7 information that they had in their possession, and that  
8 they failed to obtain information which was reasonably  
9 available and that proper attaining and assessing of  
10 such information should have been taken into account  
11 when it comes to the allocating of resources to Butt.

12 So all of those points, sir, all of those  
13 concessions and points identified by Mr Hough we say are  
14 highly significant, and the families submit that they  
15 take you -- obviously you, sir, as the ultimate  
16 decision-maker -- they take you virtually to the  
17 conclusion that the investigators did not act reasonably  
18 and should -- should be in the public interest the  
19 subject of appropriate comment for breaching Article 2.

20 So, for example, the content of the devices should  
21 have led to much greater concern being shown about Butt  
22 and should have led to greater coverage. It's not  
23 an all-or-nothing situation. We've heard observations  
24 from the Metropolitan Police about 24/7 coverage. We've  
25 heard observations from MI5 about extraordinarily

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1 intensive coverage. Mr Hough earlier spoke about  
2 continuous monitoring. Nobody is arguing for that.  
3 It's an easy argument to be deployed to try to respond  
4 to legitimate criticisms, we would respectfully submit.  
5 Nobody is arguing for that. What Lord Bingham says is  
6 required is reasonable investigation, and that's where  
7 we focus our submissions.

8 So in terms of the devices and what was found on the  
9 devices, for example, there is a danger that with  
10 familiarity of seeing this sort of material that  
11 something approaching a laissez-faire approach to such  
12 material might arise in the minds of some investigators  
13 if they don't carefully assess what actually is  
14 revealed, and if quite a few significant categories of  
15 material are found on his devices, as we say they were,  
16 that needs to be weighed.

17 So it's not just a case of saying: oh, it's more of  
18 the same extremist material we see in many of these  
19 cases, it needs a nuanced approach, and a reasonable  
20 investigator couldn't have failed but to have increased  
21 the investigative steps when the autumn 2016 material  
22 was received.

23 Over something approaching six pages, Mr Hough lists  
24 at length the arguable failings, and the families are  
25 grateful for that, and those five or six pages they

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1 submit amount to a fairly damning list.

2 Now, it's submitted that that doesn't, however, lead  
3 to the conclusion that there has been a breach worthy of  
4 comment, but we respectfully -- and we are grateful to  
5 Mr Hough and Mr Moss -- but we respectfully submit that  
6 his ultimate conclusion jars somewhat with his rather  
7 damning list, and it doesn't obviously flow from that  
8 antecedent list of arguable failings. The attack  
9 planning was going on for quite some time, it was not  
10 undetectable, it was there to be detected, eminently  
11 detectable, and we submit that these eight tragic deaths  
12 did not need to have happened.

13 Now, Witness L referred to successful disruptions in  
14 other cases, and of course that is all to be welcomed,  
15 but you, sir, will need to consider what relevance and  
16 how much, if any, relevance is to be given to that when  
17 you consider this case and this investigation.

18 Counsel for MI5 emphasises the threefold approach  
19 and we all agree as to the law, and we all agree that  
20 there has to be a real and immediate risk. Nobody  
21 overlooks that. The families deal with that in the  
22 written submissions, we refer at paragraphs 28 and 29  
23 and elsewhere to the Osman test. We say it is clearly  
24 established. The real and continuing risk was plainly  
25 there, it was posed by Butt, and it ought to have been

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1 known by the investigators, and we say that reasonable  
2 investigative steps would have -- would have -- resulted  
3 in a real prospect of detection, whether the causation  
4 test is formulated as a real prospect or a substantial  
5 chance we submit makes no difference. The case law is  
6 clear that it is not a requirement of the balance of  
7 probabilities, it is not a requirement that it has to be  
8 shown that it was probable that it would have been  
9 detected; merely that there is a real prospect, a real  
10 possibility, a real chance.

11 As Mr Hough rightly said, it shouldn't be overstated  
12 the real and continuing risk. Lord Hope in Van Colle at  
13 paragraph 66, as well as Lord Bingham at paragraph 30  
14 makes it plain that when Lord Carswell in one of the  
15 authorities spoke of a high threshold, that should not  
16 be taken as changing the test or introducing any kind of  
17 gloss to the test.

18 Before I leave Van Colle, the City of London Police  
19 make an observation as to Lord Bingham's approach. We  
20 respectfully disagree. Lord Bingham, Lord Carswell and  
21 Lord Brown all make it plain that they are in agreement  
22 with the approach of Lord Bingham to the law and to the  
23 test.

24 So trying to help you as much as I can, sir, we  
25 would like to zero-in on the key areas for your

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1 deliberation, the key areas really are to be found in  
2 Mr Hough and Mr Moss' helpful document where they focus  
3 on why, despite that damning list, in fact you shouldn't  
4 find a breach. So if we can zoom in on that.

5 At paragraph 24, really, that's where they deal with  
6 it. They argue that both L and M describe what is said  
7 to have been a thorough investigation, and today there  
8 was reference to the fact that it was a P2  
9 categorisation. Well, the fact that a P2 categorisation  
10 is given to it doesn't of itself help you with whether  
11 reasonable steps were taken or not, you need to focus on  
12 what was actually done or not done.

13 The point we make, sir, is that you've been given no  
14 actual evidence of the details of what was done, and in  
15 the PII application, we assume you were provided details  
16 of investigations carried out, but of course as you made  
17 plain in your ruling, you must put that material out of  
18 your mind, and we know that you will, but the fact  
19 remains that there is no actual evidence that provides  
20 specific detail to show what was done by way of  
21 investigation.

22 So for all the families know, there was not  
23 extensive and thorough and reasonable investigations.  
24 For all the families know, there was only quite limited  
25 eavesdropping or surveillance as to this priority

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1 terrorist suspect.

2 At paragraph 24(a), there are submissions advanced  
3 by Counsel to the Inquests about things that were  
4 discovered. Of course those facts that were of  
5 themselves discovered don't establish that what was done  
6 meets Lord Bingham's test of reasonableness, or the  
7 Osman test of taking measures which, judged reasonably,  
8 might have been expected to avoid the risk, and that the  
9 essential point is that in any two-year investigation,  
10 of course, of course there will be many facts learned,  
11 but that doesn't establish that they have met the test  
12 of reasonableness.

13 At 24(b) there's analysis of suspension and of the  
14 prioritising of resources, and a lot of weight is placed  
15 on this by both the Metropolitan Police and MI5, but we  
16 invite you to be vigilant, sir, as to how far is this to  
17 be permitted to be taken, this argument. It's deployed  
18 again and again and of course it is relevant to consider  
19 resources, but you may share a sense of unease, and  
20 certainly the families have a sense of unease, as to the  
21 claim that suspensions are essentially to be simply  
22 accepted and permitted end of story. That's the essence  
23 of what we're being told, as though somehow they are to  
24 be ring-fenced from consideration when you assess the  
25 reasonableness of the investigative steps especially,

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1 sir, when one, one of the two partner agencies of the  
2 police wasn't even asked for their view as to whether it  
3 was reasonable to suspend on two occasions for many  
4 weeks; two, this was all happening very regularly, we  
5 were told that it was happening day in and day out, so  
6 it's not just something that unexpectedly arose and  
7 couldn't be addressed by the urgent training of  
8 additional staff, you were told that it happens all the  
9 time. Year in, year out, essentially is the evidence,  
10 which is terribly troubling for the public. And despite  
11 that, there was no request for further resources.

12 Thirdly, no middle course was adopted in terms of  
13 continuing a scaled-back investigation into Butt. It  
14 was essentially an all-or-nothing decision and they  
15 decided to cease a significant amount of investigations  
16 and coverage. They were stopped.

17 Fourthly, there was no change at this stage in the  
18 risk that he was posing.

19 Fifthly, this is all at a time of increased national  
20 risk, so at a time when it might be thought that, if  
21 anything, things should be stepped up, on the contrary,  
22 they are being scaled back in relation to this priority  
23 terror suspect.

24 So it's being argued by MI5 that suspension is  
25 something basically that simply has to be accepted, and

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1 that it cannot be the subject of question or comment or  
2 criticism.

3 So for all those weeks we are simply to accept that  
4 this risk to the public is to continue without what his  
5 threat risk would otherwise require.

6 So although we do accept that allowance for  
7 resources is to be permitted to a degree, Lord Bingham  
8 was very clear in Van Colle at paragraph 30 that states  
9 are required to secure the practical and effective  
10 protection of this fundamental right, and that is  
11 a principled approach that we see in the Strasbourg case  
12 law and in our domestic jurisprudence again and again  
13 and again, otherwise we would be stripping or denuding  
14 from Article 2 the very protection that it is there to  
15 provide, and there is no case law that we have  
16 identified which states that in effect Article 2 will  
17 still be complied with if, at a time of increased  
18 national terror threats, investigations of a suspect are  
19 essentially stopped or very largely stopped.

20 The case law doesn't go that far. It makes the  
21 resources point. It doesn't permit of the extensive  
22 suspension features that arose on two occasions with  
23 Khuram Butt.

24 So increased national threat should not routinely  
25 and repeatedly lead a reasonable investigator to reduce

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1 monitoring and such decisions are not reasonable,  
2 particularly when there was no consideration of a degree  
3 of scaled-back but continued monitoring.

4 Next, sir, at 24(c), the social associates argument,  
5 to the effect that even if the two accomplices had been  
6 identified more, their associations would be regarded as  
7 merely social, and again, we ask you to approach that  
8 assertion by Witness L with great care, and we say it  
9 should be afforded little weight. First, it doesn't  
10 come from the investigators themselves, it comes from,  
11 essentially, a corporate witness saying what he believes  
12 those investigators would have been likely to think, and  
13 so he is speculating about the assessment of others.

14 Secondly, he was offering an opinion as to what  
15 other investigators might think if further unknown  
16 details were learnt, in other words, it was a might  
17 placed upon an unknown set of postulated facts and,  
18 indeed, his evidence on this involves, we would submit,  
19 very real speculation for those two reasons.

20 Speculation, indeed, seeps into much of the arguments  
21 again and again that we see in the MI5 skeleton  
22 argument.

23 Third, there was evidence that Butt was engaged in  
24 withdrawing from old non-extreme social contacts or  
25 friends.

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1 Fourthly, and linked to point three, that those  
2 people he was associating with were increasingly  
3 extremists, linked to the proscribed terror  
4 organisation, ALM.

5 Fifthly, the two examples relied upon in support of  
6 social meetings were themselves suspicious: the trip to  
7 Leeds involved meeting the Abdoullahi brothers, both of  
8 whom, we were told, were placed under pre-attack  
9 investigation and indeed, were arrested by the counter  
10 terrorism police.

11 The second example that was relied upon, the  
12 barbecue on 14 May, was at a time when we know there  
13 will have been consideration given to the purchase of  
14 the three knives the next day, and at a time when  
15 Abu Talha, the Abdoullahi brother who was under counter  
16 terrorist investigation, was speaking about gutting  
17 a kuffar. So these associations, whether they can be  
18 described as social or not, are certainly not free from  
19 concerns.

20 At 24(c), submissions are made to the effect that  
21 even now there has only been identification of one  
22 suspicious overt meeting, namely the 29 May  
23 walk-and-talk meeting. We struggle to understand this  
24 point. It seems to us, sir, that given the 7 March  
25 meetings which it has been recognised were particularly

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1 significant, that's how Mr Hough described them, despite  
2 what MI5 might say about them in their document at  
3 page 15, but 7 May is terribly important. During the  
4 investigation, the investigators were aware that Butt  
5 was meeting with Redouane at his home address, and they  
6 were aware that a little later that same evening he was  
7 at the gym, and again, Redouane is believed to have been  
8 present and at this time, Butt was wanting to be  
9 secretive about his conduct, and at this time, he was  
10 trying to get hold of an item. So all of that was known  
11 at the time.

12 Mr Hough argues that searches in relation to Zaghba  
13 would have revealed no terrorist or criminal  
14 connections, paragraph 24(c) but, again, we would again  
15 invite you to look closely at that: it must be  
16 a possibility, not fanciful, but a real possibility that  
17 the SIS marking would have been discovered, the serious  
18 criminality marking.

19 A reasonable investigator would, of course, have  
20 followed that up, and that would have resulted in the  
21 discovery that far from being just an innocent  
22 associate, this man, Zaghba, was a person who, some  
23 months earlier, had tried in vain to travel to fight for  
24 that highly violent terrorist group, Isis, and  
25 a reasonable investigation would have identified that

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1 Butt was working at a gym owned by a major terrorist  
2 suspect, Sajeel Shahid. This whole area, sir, of the  
3 gym and Shahid, leaves the families completely  
4 bewildered. A reasonable investigation would have  
5 investigated these things. That would have resulted in  
6 the link to the school being unearthed.

7 We list the ease, at page 16 of our document, with  
8 which Shahid could and should have been identified. The  
9 inquiries were wholly inadequate. A Google search and  
10 a few schools is really what it comes to by way of  
11 investigation. How that can be said to be reasonable we  
12 don't know, especially given that the police arm of the  
13 investigative partnership had a special safeguarding  
14 responsibility listed in the strategic aims of  
15 Witness M's records, and indeed, they had the assistance  
16 of Prevent colleagues who could assist.

17 The fact that Butt was associating with Zaghba at  
18 that school where Butt was espousing extremist views to  
19 children suggests a trusting relationship between Butt  
20 and Zaghba. So it's not just co-location; it leads to  
21 the clear inference of a closely trusting relationship.

22 It's argued that even if there were some suspicious  
23 features identified, it's questionable whether they  
24 would have received in-depth monitoring. But, again, we  
25 say there are flaws in such analysis. A reasonable

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1 investigator would have had greater coverage. We're not  
2 suggesting 24/7 coverage, but more coverage, especially  
3 given Butt's ongoing deployment of operational security  
4 techniques.

5 That's an important point. Again and again the  
6 argument is deployed that nothing could have been  
7 detected because he was acting in this secretive way.  
8 On the contrary, rather than exculpating the  
9 investigators, that use of operational security meant  
10 that they had to do more. They knew what they were up  
11 against, and you have to try to stay one step ahead of  
12 the terrorists. Witness L agreed: this showed that he  
13 had something to hide, and of itself it provided  
14 additional cause for concern.

15 The attack planning must have been going on for  
16 quite some months. The mutual telephone contact began  
17 on 14 January, and it was there to be detected: in the  
18 gym, at the front door of the gym where a phone was  
19 discarded on one occasion in suspicious circumstances;  
20 Redouane was working at the gym behind the same desk  
21 that Butt was working at; he was meeting Butt in various  
22 places, and L accepted that the three attackers may well  
23 have met regularly at that gym. So it is likely, we  
24 would submit, that the accomplices would have received  
25 greater attention in a reasonable investigation.

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1 Now, a central plank of the arguments for suggesting  
2 that in fact the arguable breach shouldn't ultimately  
3 result in a finding of breach is the suggestion that  
4 it's difficult to say that there should have been live  
5 monitoring on the day of the attack, and the discovery  
6 of the efforts to hide the vehicles. But we submit that  
7 that misses the point. The actual threat posed by Butt  
8 had been present and continuing for some months. We  
9 know it had been there for some time. The attack  
10 planning didn't just start on 3 June. It didn't just  
11 start at 4.00 pm with the efforts to get hold of the  
12 van.

13 In focusing, as counsel do, on that single event on  
14 3 June, we respectfully submit that they're not  
15 grappling with this important point, and we invite you  
16 to look closely at it, sir: for many months the attack  
17 planning was there to be detected and more coverage --  
18 not 24/7 continuous coverage, nobody is suggesting  
19 that -- more coverage would be likely to have unearthed  
20 it.

21 It's argued at paragraph 24(d) that evidence  
22 suggests that there was -- that no planning or  
23 preparation took place at the home of Butt. We are  
24 aware of no evidence that suggests that there couldn't  
25 have been relevant discussions at the home address and

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1 we know that he met ALM extremists, including Choudary  
2 at his home address, and MI5 knew of his use of the home  
3 address for meeting with extremists.

4 29 May, a lot of focus is placed at paragraph 24(d)  
5 on 29 May that walk-and-talk in the dead of night, but  
6 as I've sought to argue, sir, there's no evidence that  
7 that was the only occasion in which they were discussing  
8 attack planning, and it's highly unlikely that it was.  
9 The probability is that there would have been more in  
10 and around 15 May when the three identical knives were  
11 purchased for the three eventual attackers. The phone  
12 that was, broadly speaking, kept unused after the end  
13 of March, so all the way through April and all the way  
14 through May, kept ready to be used as it was in the  
15 attack.

16 So the opportunities were available at the time and  
17 the point is made: well, with the post-attack analysis,  
18 little more has been unearthed, but that, again, misses  
19 the point that their phones haven't survived. The  
20 discussions that they had at the time aren't available  
21 to us now, so there will have been -- you can be  
22 confident there will have been opportunities at the time  
23 to unearth the attack planning.

24 A significant point that is repeatedly advanced by  
25 both the Metropolitan Police and MI5, and it's touched

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1 upon by Counsel to the Inquests, is the absence of  
2 evidence of attack planning having emerged. But the  
3 families, again, invite caution in respect of that, sir.  
4 We know what Lord Harris would say about it, we know  
5 what Lord Bingham would say about it, it ill behoves  
6 investigators to rely on absence of information  
7 suggesting an attack if they might have carried out  
8 inadequate or insufficient investigations to see if  
9 there's planning of an attack, and huge parts of his  
10 activities were going undetected.

11 I agreed "possibly a whole range of activity was  
12 happening without MI5's knowledge". That was the  
13 evidence he gave to you, sir. Virtually every evening  
14 when he was going to the gym, that was missed for months  
15 on end. Virtually every afternoon when he was going to  
16 the school, that it seems was missed for months on end,  
17 and given the risk he posed, this was, we submit,  
18 inadequate investigative coverage, and it doesn't need  
19 hindsight to show this.

20 Again, hindsight is an argument deployed readily,  
21 and of course it's important, but virtually all of the  
22 failings that have been identified in that damning list  
23 that Mr Hough and Mr Moss have assembled and which we  
24 have listed in our document were there to be identified  
25 in real time, as Sir James might describe it. It

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1 doesn't require hindsight to spot these missed  
2 opportunities, especially also when we know that he is  
3 trying hard to avoid detection. There was no positive  
4 evidence of abandonment of his earlier stated aspiration  
5 to commit a UK attack, and that's an important point,  
6 and fourthly, in relation to this, no evidence emerged  
7 point, fourthly, you would expect attack planning to be  
8 hard to detect when it's a low sophistication scenario,  
9 when the time period, namely the spring of 2017, showed  
10 that low sophistication attacks were exactly the sorts  
11 of attacks that were being planned with less needed by  
12 way of preparation and less that was available to be  
13 detected.

14 So for all those reasons, a higher degree of  
15 monitoring was needed, and Lord Bingham and Lord Harris  
16 undermine significantly this point that has been  
17 advanced by the investigators.

18 At 24(e) it's argued that even if MI5 had learnt of  
19 the hiring of the van on the day, it's debatable whether  
20 it would have been tailed or stopped, and again, we  
21 invite you to engage with a number of distinct points on  
22 that. There are nine crucial points that we ask you to  
23 consider on that: first, a proper investigation would  
24 have had greater monitoring prior to 3 June at a time  
25 when the attack planning was there to be detected. I've

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1 touched upon this earlier . We don't focus just on the  
2 Saturday afternoon.

3 Secondly, if they had detected knowledge of the van,  
4 it's possible, if not probable, that they also would  
5 have detected the hiring of the 7.5-tonne lorry . And  
6 MI5 and the Metropolitan Police haven't really grappled  
7 with this point, and we invite you to consider it  
8 closely . A reasonable investigator knowing of that, not  
9 just this LCV van, as it might be described by  
10 yesterday's witness, a 2.5-tonne van, but a 7.5-tonne  
11 lorry, knowing about that would have intervened and  
12 tailed and stopped, certainly as they made their way  
13 into the city centre .

14 Thirdly, there was no other significant  
15 investigation that you were told about that would have  
16 been compromised if there had been an intervention .  
17 And, fourthly, the evidence of M, which undermines the  
18 evidence of L . Without any need to resort to hindsight,  
19 the thrust of M's evidence is that the vehicle would  
20 have been stopped on the night, and he was not basing  
21 his decision on any suggestion that he had been advised  
22 by MI5 to stop, and care must be taken to consider what  
23 M was and wasn't saying in this part of his evidence .  
24 He said nothing of the sort . He merely said that if he  
25 had found out, essentially, from MI5, if he had been

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1 notified, as of course he should have been in  
2 a reasonable investigation between the two partners, if  
3 he had been notified by them, his decision in that  
4 climate would have been to stop it, and certainly having  
5 regard to the causation test and what Lord Hope and  
6 Lord Bingham said in Van Colle, you don't have to have  
7 a probability of stopping it; all that is required is  
8 that there's the real possibility or the real prospect  
9 of stopping it, and clearly that arises on the facts, we  
10 would submit.

11 Next, the cover story . It's possible the cover  
12 story would not have been picked up . Even if it was,  
13 reasonable investigators wouldn't simply have accepted  
14 that at face value but would have considered it with  
15 care, and moreover, in assessing any cover story, L did  
16 not give any explanation for how a cover story could  
17 square with the rental of that huge 7.5-tonne lorry, and  
18 how on earth could a 7.5-tonne lorry being rented have  
19 been consistent with a young 20-something man moving  
20 flats for a friend .

21 The eighth point on this . We strongly disagree with  
22 the arguments that are advanced by MI5 as to the gravel .  
23 People "moving a brother" do not typically buy, and on  
24 the same day, load, 29 bags of gravel from B&Q when  
25 they're supposed to be moving the contents of a person's

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1 flat . And that, again, would add significantly to the  
2 alarm bells that should be ringing in the mind of any  
3 reasonable investigator . And 9, and finally, L once  
4 again was engaging in speculation as to whether the van  
5 would be stopped . A reasonable investigator,  
6 investigating Butt, would, we submit, have discussed  
7 this with Witness M, and we know what Witness M's likely  
8 answer would have been: namely to stop, particularly in  
9 that climate, particularly a few days after the most  
10 recent terror attack in this country in Manchester .

11 So causation is clearly established on the evidence .  
12 There was a substantial chance or a real prospect, if  
13 not probability, that it would have been prevented, that  
14 the vehicle would have been stopped . So for all those  
15 reasons, we say that there was a breach .

16 Other things that haven't been touched upon by  
17 Mr Hough add to the concerns and to the criticisms, we  
18 would respectfully submit, distinct areas of evidence,  
19 namely the evidence you've heard suggesting that ALM was  
20 simply being taken seriously enough and that  
21 insufficient weight was being given to his meeting in  
22 particular with Choudary at a time when Choudary in 2014  
23 had declared his public support for Isis and Baghdadi  
24 and was under arrest from 2014 and ultimately charged  
25 and then convicted in 2016 for supporting Isis .

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1 Next, fighting for Isis probably involved a decision  
2 that he was willing to die . Again, that should have  
3 been given more weight by Witness L . The devices  
4 repeatedly showed that he was viewing material about  
5 martyrdom . Again and again and again, a focus on  
6 martyrdom operations . The message that Butt wanted to  
7 be amongst the martyrs in paradise, the message being  
8 reported to Jibril of all people . And then in relation  
9 to Sajeel Shahid, you have the points in relation to  
10 that, sir . They're perhaps self-evident: MI5 had known  
11 of his link to the gym since 2014 . It was in the media  
12 in 2014 . There was a reminder about a month before the  
13 attack in that Dover information that reached MI5 on  
14 8 May and they knew that he had been accused by their  
15 witness in the Crevice trial of facilitating the terror  
16 training in Pakistan featuring Mohammad Sidiq Khan,  
17 the most notorious recent domestic terrorist .

18 It was very troubling for the families to hear that  
19 the SIO of the counter terrorist team didn't even know  
20 until these hearings of the Sajeel Shahid link to Butt's  
21 gym .

22 Clearly any reasonable investigator would have  
23 identified that, would have investigated more into what  
24 Butt was doing at the gym, and the failings around the  
25 gym, we submit, are remarkable . L didn't know for sure

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1 if the investigators even accessed the records that were  
2 held somewhere in the databases about Shahid, and we  
3 know that this is a gym where black banners appear to  
4 have been hanging up in the inside of the gym, although  
5 they were swiftly removed; that a sword or sheath was on  
6 display; that an Isis flag, it appears, was on their  
7 Facebook page, and all of this in the context of  
8 intelligence that Butt was considering a group attack,  
9 such that his associations were important.

10 Again, it didn't require huge resources. A lot of  
11 this was on the internet. A bit of straightforward  
12 investigative work would have unearthed these things and  
13 inevitably would have led to further investigative work.

14 So we submit that you are driven to the conclusion  
15 that there was a failure with any appropriate urgency or  
16 sufficiency to investigate what Butt was doing in and  
17 around the gym.

18 A number of distinct points, if I may, just to  
19 respond to some of the points advanced by MI5 and by the  
20 police, and I can take these briefly: the greater the  
21 risk, the more that has to be done, and given that they  
22 knew that rental of vehicles could still be obtained  
23 without any substantial obstacle being put in place,  
24 that heightened the need for thorough investigations.

25 Next, Sir James Eadie seeks to refine the Osman duty

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1 in his document at paragraph 39. Instead of asking  
2 whether what was done was reasonable, he seeks to raise  
3 the bar by saying that you should ask was the failure to  
4 do something unreasonable, and I know, sir, you will be  
5 vigilant to guard against the misconstruing of the test  
6 or the raising of the bar in such a way. The test is  
7 simply:

8 "... measures which judged reasonably might have been  
9 expected to avoid the risk that they ought to have  
10 known."

11 See the wording in Osman.

12 And a further one, a lot of the focus of argument  
13 from the Metropolitan Police and MI5 is on what was  
14 being done by the accomplices, Redouane and Zaghba. But  
15 of course the opportunity to detect the attack planning  
16 didn't only arise in relation to them. Even without  
17 picking up what they were doing with knives or with fake  
18 IEDs, Butt was at the heart of it, and proper monitoring  
19 of Butt, not 24/7, but reasonable monitoring of Butt  
20 probably would have picked up the discussions about the  
21 attack planning: what was he saying, for example, in his  
22 text messages and the like.

23 So on that topic, to conclude, if you are against us  
24 you have wording that has been proposed by Mr Hough in  
25 his document at paragraph 62. For all the reasons we've

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1 outlined, sir, we submit the wording should go further  
2 and you should record the fact that a reasonable  
3 investigation possibly could have resulted in the  
4 prevention of the attack, and indeed the wording  
5 proposed by Mr Hough isn't the end of it. Of course,  
6 Mr Adamson at paragraph 65 has proposed some other  
7 details that may feed into that part of any narrative  
8 determination, and so you have the possibility for  
9 degrees of comment on this central issue.

10 Finally, very briefly on barriers. Mr Adamson will  
11 deal with it. We submit that there were systemic  
12 failings and deficiencies. We also submit that the  
13 operational duty applies and we set that out in writing,  
14 and Mr Adamson I know will deal with it. But one point  
15 that I do need to deal with which Mr Adamson won't be  
16 addressing is the relevance of the barriers to the  
17 deaths of the others, and you may have noticed that when  
18 the evidence was being given as to the barriers, many of  
19 the family members in relation to the deaths in and  
20 around Boro Bistro were regularly attending. They don't  
21 think it's speculative that barriers would have made  
22 a difference. Common sense dictates that it's not  
23 speculative that barriers on the bridge would have made  
24 a difference to what was inevitably a terrorist attack  
25 to be conducted in two stages, and you have the point,

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1 sir, that the propaganda emphasises doing a two-stage  
2 attack: Lee Rigby, Masood, the propaganda magazines: use  
3 the vehicle, after that when you've mown down people in  
4 the vehicle get out your knives and finish things off as  
5 part of your overall martyrdom operation, that's what  
6 they intended to do, and the suggestion that they might  
7 have, somehow, having seen the barriers on  
8 London Bridge, parked up, not deployed their lethal  
9 weapon with its 29 bags of gravel, to give it added  
10 lethal weight, is fanciful, we would respectfully  
11 submit, especially given that we know that another  
12 location that they were giving active consideration to  
13 was Oxford Street which would lend itself to a two-stage  
14 attack, given the absence of bollards or protective  
15 measures, and the other one was the City of Westminster.  
16 Again, what do we know about Westminster Bridge in  
17 early June? Still no barriers.

18 If barriers had been on London Bridge, the realistic  
19 outcome would have been that they would have gone  
20 elsewhere, and that's something which, as I say, both  
21 common sense dictates and is felt very keenly by the  
22 families. And you have the evidence from Mr Jolley and  
23 from Superintendent Riggs that it was a spontaneous  
24 decision on the night in essence, they were identifying  
25 as they went along where they could carry out their

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1 two-stage attack.  
 2 You have the footage that we all viewed as they  
 3 drove into the city centre. Nearly every street on the  
 4 way there was closed down to them in terms of potential  
 5 attack given the fact that all these streets were heavy  
 6 with street furniture and bollards and obstacles and  
 7 parked cars and the like. As Sergeant Hone told us,  
 8 London Bridge stuck out in this regard.

9 So, sir, those are my submissions. I've been passed  
 10 a note saying that I've now hit 50 minutes, but  
 11 I'm pleased to say that I haven't gone substantially  
 12 past 50 minutes.

13 THE CHIEF CORONER: Thank you very much indeed,  
 14 Mr Patterson.

15 Mr Adamson, we'll take our break there and then  
 16 we'll turn to the arguments. Again, I know that you and  
 17 Mr Patterson throughout these Inquest hearings have  
 18 divided topics of concern to both sets of families that  
 19 you represent and I will know that you, as it were, side  
 20 with his arguments in respect of what you've dealt with  
 21 and you are specifically going to deal with the issues  
 22 about barriers. But, as I say, just to make very clear  
 23 to those that you represent, that I understand that  
 24 division of labour and it's not that you need to repeat  
 25 everything that's been said, I understand the position

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1 entirely.  
 2 MR ADAMSON: Thank you, sir.  
 3 THE CHIEF CORONER: And I think after you, Mr Adamson, we're  
 4 then turning to --  
 5 MR HOUGH: To the Secretary of State's two counsel, one  
 6 after the other.  
 7 THE CHIEF CORONER: Yes. And it may well be, looking at  
 8 Ms Leek and Mr Sheldon, if we get to about 12.55, we'll  
 9 break at 12.55 rather than at 1 o'clock today if that's  
 10 all right.  
 11 MR HOUGH: It may be that we hear from one of them before  
 12 lunch and one after.  
 13 THE CHIEF CORONER: Thank you.  
 14 (11.45 am)  
 15 (A short break)  
 16 (12.07 pm)  
 17 Submissions by MR ADAMSON  
 18 MR ADAMSON: Sir, may I begin by thanking Mr Patterson for  
 19 his submissions in relation to the Security Services  
 20 aspects of this case. I adopt everything that he said.  
 21 You have my written submissions in relation to it, and  
 22 I invite you to include wording similar to that which is  
 23 contained in paragraph 65 of my submission. I don't  
 24 propose to elaborate upon it now; it's there in writing.  
 25 THE CHIEF CORONER: Yes.

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1 MR ADAMSON: And if you accept Mr Patterson's submissions  
 2 that the Article 2 duty is arguably engaged, then in  
 3 those circumstances, we invite you to expand your  
 4 narrative in relation to those matters.

5 As Mr Patterson indicated, I will be focusing my  
 6 submissions predominantly on the topic of bridge  
 7 security, bridge protective security.

8 At 22.07 on 3 June, Xavier was struck by the vehicle  
 9 which the terrorists utilised to carry out their attack.  
 10 It was a murderous act, but regrettably in this day and  
 11 age a predictable one.

12 We, as a society, expect the State to put in place  
 13 a framework of laws, procedures and systems to protect  
 14 us against that threat. We submit that Article 2 is  
 15 engaged in relation to bridge security matters, and we  
 16 submit that it is engaged both in the systemic and  
 17 operational sense.

18 The Article 2 duty imposes a positive obligation to  
 19 take all appropriate steps to safeguard life and, above  
 20 all, a primary duty on the State to place a legislative  
 21 and administrative framework designed to provide  
 22 effective deterrent against threats to life. That was  
 23 made clear in the Oneryildiz case, proved in Rabone.

24 The Secretary of State for the Home Department  
 25 suggests that in relation to the general duty to have in

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1 place a system of framework and laws, that in the  
 2 context of this case, that that is limited to putting in  
 3 place effective criminal law provisions to deter  
 4 the commission of offences against the person backed up  
 5 by a law enforcement machinery for the prevention,  
 6 suppression and punishment of breaches of those  
 7 provisions. I'll come back to that in a moment, but  
 8 that is in essence what is submitted at paragraph 7 of  
 9 the Secretary of State's submission.

10 The general duty under Article 2 is not a closed  
 11 shop. The duty to protect life has been found to exist  
 12 in a range and variety of different circumstances. The  
 13 Oneryildiz case, to which I referred, related to  
 14 a municipal rubbish tip. An explosion occurred as  
 15 a result of failure to operate that tip appropriately,  
 16 a methane explosion, the authorities had been warned of  
 17 the risks of an explosion and had taken insufficient  
 18 steps to deal with it.

19 In that case the court said this:

20 "Article 2 does not solely concern deaths resulting  
 21 from the use of force by its agents of the State, but  
 22 also lays down a positive legislation ... to take  
 23 appropriate steps to safeguard the lives of those within  
 24 their jurisdiction. The Court considers that this  
 25 obligation must be construed as applying in the context

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1 of any activity , whether public or not, in which the  
2 right to life may be at stake ...”

3 And that, in that case, included industrial  
4 activities .

5 In another case, Budayeva, the allegations concerned  
6 the Russian authorities’ failure to heed warnings about  
7 the likelihood of a large-scale mudslide, and in that  
8 case the authorities ought to have acknowledged the  
9 likelihood of the mudslide and taken practical measures  
10 to ensure the safety of the local population.

11 Another example is the case of Kolyadenko, that case  
12 concerned the duty to protect the risks inherent from  
13 the operation of a reservoir .

14 So you have a range of different circumstances in  
15 which the duty to protect life arises , and so it is that  
16 we turn in this case to the question of security on the  
17 bridge.

18 At paragraph 10 of the Home Secretary’s submission,  
19 it’s asserted that the duty to protect life in effect  
20 cannot embrace a duty to provide bridge security in the  
21 circumstances of this case. If there’s any doubt about  
22 that it is , in my submission, eliminated by  
23 paragraph 13(g) of the Secretary of State’s submission,  
24 in which the Secretary of State ends a series of  
25 questions, the final one of which is this :

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1 “Where is the legal authority which provides that  
2 the Article 2 general duty requires the State to put in  
3 place specific physical measures to protect against the  
4 criminal acts of third parties? None has been  
5 identified by CTI [Mr Hough] or counsel for the  
6 families .”

7 So in effect it is said that because there is no  
8 similar case, then this cannot be a case where the  
9 general duty is engaged. That, we respectfully submit,  
10 cannot be right .

11 We also submit that it is a startling proposition  
12 that in effect , the duty to protect life against the  
13 risk posed by the criminal acts of third parties , are  
14 effectively satisfied by having in place a criminal  
15 justice system.

16 The family I represent regard it as wholly  
17 unacceptable for the Secretary of State to assert that  
18 there was no duty on it , in effect , under the Convention  
19 to have in place a system of protective security .

20 If one steps back for a second and considers the  
21 implications of that, in my submission it becomes clear  
22 that it must be wrong. Could it seriously be suggested  
23 that the Secretary of State owes no obligation to those  
24 who attend football stadia if it had in place no system  
25 for considering the risks to which they were exposed

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1 from threats from criminal acts of third parties?

2 In my submission, there is simply no realistic  
3 prospect that anyone would consider that the  
4 Article duty should be so narrowly confined.

5 In my submission, it also does not sit happily with  
6 the framework that the Secretary of State has in place.  
7 The Secretary of State in its submission relies in its  
8 argument against there having been an actual breach on  
9 the Prevent strategy that they had in place, and the  
10 system of dissemination of advice through NaCTSO, via  
11 CTASAs, to those with responsibilities for locations in  
12 the United Kingdom. In my submission, the structure  
13 that they have in place in relation to that must, we  
14 would submit, be capable of scrutiny . It must, we  
15 submit, be capable of engaging the Article 2 duty,  
16 because the whole system, in my submission, that is in  
17 place is designed to protect life .

18 And we would submit that it’s present because the  
19 State recognises that it must have in place systems to  
20 protect life in circumstances such as these, and that  
21 includes the provision of an adequate system for  
22 ensuring that crowded places are adequately protected.

23 That is not, we submit, a submission which results  
24 in this court micromanaging or placing an impossible  
25 burden on the State by exploring and examining the

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1 adequacy of the arrangements that they have in place  
2 and, where appropriate, criticising if those systems  
3 have fallen short of that which we expect.

4 The inevitable conclusion, we would submit, that you  
5 are driven to in this case is that the systems that were  
6 in place were, in fact , deficient . They were deficient  
7 for multiple reasons. First of all , the definition of  
8 the crowded places which was contained within the 2012  
9 documentation to which were referred, and repeated in  
10 documents which were produced after the event in 2018,  
11 essentially remain the same. It was lengthy, unwieldy,  
12 and, in my submission, it was too rigid .

13 It operated in a way which meant that spaces as  
14 opposed to places were not given the attention that they  
15 ought to have been provided. We know that that is so  
16 because so far as London Bridge is concerned, before  
17 Police Constable Hone considered it, no CTSA that we are  
18 aware of had given any real attention to London Bridge  
19 or consideration as to the risks that it posed.

20 The second aspect of the system which was, in our  
21 submission, inadequate was the process of tiering .  
22 Unless a location qualified as a crowded place, ie  
23 because it met the relevant density criteria , and other  
24 criteria set , it could not qualify as a tier 1 or tier 2  
25 crowded place. That would inevitably result in the

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1 resource which was made available to it in terms of  
 2 advice and other support would be diminished. At best,  
 3 a location which did not meet the criteria for a crowded  
 4 place could be considered a tier 3 location.

5 In our submission, a system which operates in such  
 6 a way is inflexible because it inevitably results in  
 7 a significant risk that a location that is of high risk  
 8 does not receive the attention that it deserves, and  
 9 it's also, in our submission, ripe for inconsistency.

10 The consequences of these failures was that  
 11 London Bridge, we submit, for a prolonged period of time  
 12 did not receive the attention that it deserved. It was  
 13 only when Police Constable Hone examined it that the  
 14 suggestion of barriers or some form of hostile vehicle  
 15 mitigation for that location was suggested.

16 Now, in our submission, that in itself demonstrates  
 17 the inadequacies of the system. This was a location  
 18 which had predictably high levels of pedestrian flow,  
 19 dense high levels of pedestrian flow at predictable  
 20 times. It was a location which was exposed. There were  
 21 no levels of protection for pedestrians on the bridge,  
 22 and this was known before the London Bridge attack  
 23 because it's contained within Police Constable Hone's  
 24 summary of the Cerastes work and his recommendations on  
 25 16 July.

1 The system that was in place had failed to identify  
 2 that location despite Nice, despite Berlin, despite  
 3 Stockholm, and despite Westminster, and in our  
 4 submission, the system did not protect life in a way  
 5 which it ought to have done. It did not protect life in  
 6 a way which can be viewed with the benefit of foresight,  
 7 not with the benefit of hindsight, and we can say that  
 8 with complete clarity and with complete certainty,  
 9 because when one looks at the description of the threat  
 10 that London Bridge posed and the Cerastes work, the  
 11 Cerastes work predicted this event with unerring  
 12 accuracy.

13 The system was also flawed in that the arrangements  
 14 as between the various duty holders lacked urgency and  
 15 dynamism. Not a single police witness spoke of any  
 16 awareness of an ability to implement a temporary  
 17 physical security measure prior to London Bridge. It  
 18 was a binary option, in effect. HVM after a prolonged  
 19 period of delay, or the National Barrier Asset, if there  
 20 was specific intelligence or if there was an event. In  
 21 our submission, the fact that those responsible for  
 22 discharging the duties that they had to protect those on  
 23 the bridge -- and they undoubtedly, in our submission,  
 24 had duties in the context of their roles as CTAs and  
 25 the like -- were unaware of any other process to deal

1 with risks on the bridge indicates that there was  
 2 an inherent inadequacy in the arrangements that they had  
 3 in place.

4 There's a further element to the systemic failures,  
 5 and that is the institutional fog we would submit that  
 6 existed as to where responsibility lay for  
 7 implementation of the control measures that were  
 8 necessary.

9 You heard from Transport for London that they did  
 10 not consider that it was their obligation to carry out  
 11 a proactive risk assessment process of roads under their  
 12 control to assess the need for protective security to  
 13 counter terrorism. Nobody challenged Ms Hayward's  
 14 evidence, at least not that I can recall, to the effect  
 15 that TfL's attitude to that, TfL's approach to that,  
 16 reflected practice across the country. It may be that  
 17 there were variants, but it was certainly the thrust of  
 18 her evidence that it was commonplace.

19 The Secretary of State, through the evidence of  
 20 Ms Nacey, gave a different impression, but in my  
 21 submission the fact that there was uncertainty about  
 22 where responsibility lay indicates that the system that  
 23 they had in place to ensure that the locations were  
 24 given the proper attention that they deserved must, with  
 25 respect, have been inadequate.

1 For the range of reasons that are set out in the  
 2 written submissions, and I have touched upon today, in  
 3 our submission, the systems were inadequate.

4 If you are not persuaded that the systemic failings  
 5 are sufficient to engage the Article 2 duty, in my  
 6 submission, the court can also consider that there was  
 7 a real and immediate risk to life to those on the  
 8 bridge, such that the operational duty was engaged in  
 9 relation to protective security on the bridge.

10 We have already touched on Nice and Berlin, but in  
 11 my submission the events on Westminster Bridge on  
 12 22 March were a gamechanger. The attack was on  
 13 a bridge. The reasons why a bridge would be  
 14 an attractive location were the reasons identified by  
 15 Police Constable Hone: it left those on the bridge with  
 16 nowhere to go, and so in our submission, this was  
 17 an obvious threat to Londoners which ought to have been  
 18 addressed swiftly and promptly.

19 There can be, we would submit, no doubt that this  
 20 was an obvious threat. Mr Patterson has, on occasions,  
 21 taken this court to press reports at the time which  
 22 demonstrate that there was public concern about it, and  
 23 justifiable public concern. It can't be an answer, in  
 24 our submission, to that justifiable public concern about  
 25 security on a bridge to say: well, there are many other

1 locations where pedestrians are exposed to the risk of  
2 a vehicle-as-weapon attack, because those other  
3 locations, wherever they may be, do not have the  
4 features of bridges, and it's striking that within  
5 24 hours of the London Bridge attack, the answer to how  
6 to address this risk was identified and a solution was  
7 implemented almost instantaneously, and the reason it  
8 was identified so swiftly is because it was obvious.

9 It was obvious, we would submit, to Cerastes, it was  
10 obvious to PC Hone, Mr Haddon, another member of the  
11 City of London Police force who had considered the top  
12 five locations of risk and identified London Bridge. It  
13 doesn't, we would submit, take a great deal of  
14 imagination. The risks that Mr Haddon was identifying  
15 were those that were being identified by Mr Hone, and  
16 the author of the Cerastes documentation. And it  
17 demanded an immediate response.

18 Now, doubtless it will be suggested: well, nobody  
19 suggested that there was an urgent requirement for  
20 measures to be implemented. We submit that that lack of  
21 urgency arose not because of any objectively good  
22 reason. It arose because there was a failure on the  
23 part of the authorities to understand collectively the  
24 risk, to share the relevant information and to  
25 understand collectively what the solution to that was.

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1 So TfL, the City of London Corporation -- well, TfL  
2 didn't know. The City of London Corporation knew from  
3 8 May, but didn't consider independently what could be  
4 done about it, and the City of London Corporation, the  
5 City of London Police force regarded the only solution  
6 as being one of hostile vehicle mitigation in the long  
7 term, or at least consideration to be given to it,  
8 coupled with increased Servator deployments.

9 With respect to the former, no consideration was  
10 given to a temporary response in terms of physical  
11 measures. With respect to the latter, personal  
12 deployments of individual officers would never be  
13 a match for some form of permanent physical security,  
14 because it would always be dependent on the times that  
15 officers would be present.

16 We know in the light of the evidence of Ms Hayward  
17 that if somebody had raised the suggestion that urgent  
18 action was required, action could and should have been  
19 taken. I don't seek to criticise PC Hone, as he then  
20 was, for his actions, far from it, but Police Constable  
21 Hone was operating in an environment where no fast-time  
22 solution was deemed viable, was deemed even on the  
23 table. So in the circumstances, in my submission, the  
24 proper consideration that it ought to have been given  
25 was never provided.

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1 So for those reasons we submit there was a real and  
2 immediate risk to life, and as a result of the failure  
3 to take action, an opportunity to save the lives of  
4 Xavier and Christine were lost.

5 Sir, I have only one final point to make, and it  
6 concerns Xavier. We of course heard evidence at the  
7 start of this Inquest about the search for Xavier.  
8 I don't suggest that Article 2 is in relation to that  
9 aspect of the evidence in this case. As you know from  
10 my questioning of some of the witnesses that we heard in  
11 the early part of this Inquest, those who I represent  
12 have some concerns about the adequacy of the search that  
13 was performed.

14 THE CHIEF CORONER: Yes, the so-called "hasty search".

15 MR ADAMSON: The so-called hasty search.

16 THE CHIEF CORONER: A rather unfortunate term, I think we  
17 all accept.

18 MR ADAMSON: Yes. And they also have concerns about the  
19 speed with which it was called off, but they recognise  
20 the evidence of Mr Savage and Mr Lockyer, that suggests  
21 that having been propelled into the water, the impact of  
22 the water and the moments thereafter meant that it was  
23 probably already too late by the time those searches  
24 were carried out.

25 THE CHIEF CORONER: I think that must sadly be the case.

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1 MR ADAMSON: I fear that must be so.

2 Sir, those are my submissions.

3 THE CHIEF CORONER: Thank you very much, Mr Adamson.  
4 Mr Sheldon.

5 Submissions by MR SHELDON QC

6 MR SHELDON: Sir, the closing submissions on behalf of the  
7 Home Secretary are to be divided. Ms Leek will deal  
8 with the protective security issues --

9 THE CHIEF CORONER: Yes.

10 MR SHELDON: -- and I will deal now, if I may, with the MI5  
11 investigation.

12 Sir, I see I've been left about 15 minutes before  
13 12.55. I will use those as efficiently as I can, but  
14 I fear that I may not complete my submissions by then  
15 and may have to address you briefly after lunch.

16 THE CHIEF CORONER: That's fine, Mr Sheldon, and again, can  
17 I thank you very much for the detailed written  
18 submissions which have been provided, and also to  
19 Ms Leek for both the aspects which I've seen and I've  
20 read.

21 MR SHELDON: Thank you, sir.

22 Sir, as you will have seen, then, from our written  
23 submissions, the focus of MI5's closing submissions as  
24 to your determinations is on the question of Article 2  
25 engagement, and in particular whether there is

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1 an arguable case of a breach of the operational duty on  
2 the part of MI5.

3 Now, I acknowledge at the outset that the  
4 significance of your resolution of this issue may be  
5 limited for three principal reasons: firstly, it will  
6 not, of course, affect the scope of your investigation,  
7 which has been wide-ranging and thorough, both in  
8 general terms and in respect of the MI5 investigation of  
9 Butt in particular. It has fully addressed not just the  
10 means by which the victims of the attack came by their  
11 deaths, but also the wider circumstances surrounding the  
12 attack.

13 Secondly, and to address a submission made by  
14 Mr Patterson, it will not affect your analysis of the  
15 Secretary of State's PII application, because as you  
16 know, the question of disclosure in this Inquest has  
17 been approached by MI5 and by your counsel on the basis  
18 that any relevant material held by MI5 should be  
19 disclosed to the greatest extent possible, consistent  
20 with the need to protect national security. That has  
21 resulted in an exhaustive exercise which produced, as  
22 your counsel have said, and (inaudible) have confirmed,  
23 an unprecedented amount of disclosure of an active MI5  
24 investigation into a subject of interest, and that  
25 approach would have been no different had it been

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1 determined that this was an Article 2 inquest from the  
2 outset.

3 Thirdly, I would acknowledge that the issue may not  
4 affect the structure or, indeed, the content of your  
5 conclusions as well, because we would accept that were  
6 you to find Article 2 to be engaged on some alternative  
7 basis, and I'm not inviting you to do so, the  
8 authorities would suggest that you should return a brief  
9 Article 2-compliant conclusion addressing all matters  
10 you consider to be of central relevance to the deaths  
11 and not seek to deal differently with different aspects  
12 of the case.

13 Nonetheless, and despite those observations as to  
14 the potentially limited practical significance of this  
15 issue, you will appreciate a concern of MI5 to ensure  
16 that any conclusion you may reach on the question of  
17 whether there is an arguable case of a breach of the  
18 Osman duty, be based on the correct application of the  
19 legal principles and a rigorous analysis of the relevant  
20 evidence, and we hope that our written submissions and  
21 the brief observations to follow will assist in that  
22 regard.

23 Sir, we part company with Counsel to the Inquest, as  
24 you have seen, on the question of whether the evidence  
25 supports an arguable case of breach of the Osman

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1 operational duty, and I'll summarise in a moment the  
2 principal reasons for that divergence of view. However,  
3 we agree entirely with your counsel in their analysis of  
4 whether if an arguable case is found to be established,  
5 your conclusions should include any criticism of MI5's  
6 conduct of the investigation into Butt.

7 Counsel to the Inquest are, we would submit, quite  
8 correct to submit that they should not. We also agree  
9 entirely with Counsel to the Inquest's formulation at  
10 paragraphs 61 to 62 of their written submissions of what  
11 the terms of an Article 2-compliant conclusion should be  
12 in respect of what was known about Butt's extremism and  
13 the investigation conducted into his activities should  
14 you determine that a conclusion of that nature is  
15 required.

16 Although our submissions are directed primarily at  
17 the existence of an arguable case, they apply, of  
18 course, with even greater force to the further question  
19 of whether, if there is such an arguable case, there are  
20 grounds for criticising MI5's investigation, and in the  
21 event that you are not persuaded by our submissions as  
22 to the existence of an arguable case, we would simply  
23 adopt those submissions together with those made by  
24 Counsel to the Inquest, in support of the alternative  
25 contention that your conclusions should not include any

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1 criticism of the investigation which was, we would  
2 submit, a proportionate and well conducted one.

3 Sir, there is very little I wish to say about the  
4 law, which we've addressed in detail in our written  
5 submissions. There is, it seems to us, very little  
6 between the interested persons and Counsel to the  
7 Inquest in respect of the principles applicable to the  
8 operational duty, at least, save for some slight  
9 differences of emphasis, and the essential framework is  
10 largely uncontroversial. I'm sorry that you have had to  
11 wade through a degree of repetition of the legal  
12 framework in a number of different sets of submissions  
13 but you'll understand that the time constraints meant  
14 that we had to do quite a lot of this work in parallel.

15 THE CHIEF CORONER: I quite understand.

16 MR SHELDON: Thank you. However, sir, although largely  
17 uncontroversial, there are four aspects of the  
18 application of the legal framework which are, we would  
19 submit, of particular importance when it comes to  
20 analysing the evidence for this purpose.

21 The first is the restriction of the Osman duty to  
22 knowledge of a real and immediate risk to life. In the  
23 present context that translates into knowledge that  
24 an imminent attack was being planned, and is to be  
25 distinguished from knowledge that an individual might be

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1 dangerous in some general sense, or might be behaving in  
2 a manner such as to give rise to legitimate concern.  
3 Numerous examples have been given in the submissions of  
4 both Counsel to the Inquest and the families of  
5 additional investigative steps which might have been  
6 taken and, if taken, might have revealed some additional  
7 knowledge about Butt and/or the other attackers.

8 However, that additional knowledge would only bear  
9 upon the Osman duty analysis were it to constitute  
10 knowledge of attack planning. Additional knowledge to  
11 the effect that Butt was a consumer or espouser of  
12 extremist propaganda, or that he associated with  
13 extremists, or that he was aspiring to travel overseas,  
14 would not be relevant to the existence of an arguable  
15 case of breach of the operational duty and, accordingly,  
16 we submit, care has to be taken when assessing  
17 a submission such as the one you heard from Mr Patterson  
18 this morning regarding the material on Butt's devices,  
19 given that the exhaustive analysis of every single piece  
20 of content on those devices has revealed no evidence  
21 whatsoever of any active attack planning.

22 So the second aspect of the framework I wish to  
23 highlight briefly is the need to be rigorous in the  
24 exclusion of hindsight. Now, the Osman formulation  
25 itself makes it clear that the question is what the

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1 authorities knew or ought to have known "at the time",  
2 and Strasbourg has repeatedly emphasised the need to  
3 exclude hindsight from the analysis.

4 Now, whilst that injunction is easy and  
5 uncontroversial to state, it is, we would respectfully  
6 suggest, a challenging one to apply. As Witness L  
7 explained, all of the 3,000 or so subjects of interest  
8 under active investigation by MI5 lead ordinary lives.  
9 They buy household items from supermarkets and DIY  
10 stores. They rent vehicles. They associate with wide  
11 circles of friends and associates, many of whom may have  
12 no links of any sort to any kind of extremism.

13 After a terrible attack of this sort, it is very  
14 difficult to assess objectively evidence of an attacker  
15 placing kitchen knives into his shopping basket or  
16 hiring a vehicle without attaching a far greater  
17 significance to these everyday activities than would  
18 have seemed appropriate at the time.

19 The same applies to associations. Any occasion on  
20 which those we now know to be the attackers associated  
21 with each other is imbued with a profound significance  
22 as an occasion on which it is possible some form of  
23 attack planning took place, but we know that Butt and  
24 the other attackers associated widely with individuals  
25 who were not extremists at the UFC, at the barbecue he

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1 organised shortly before the attack, at a weekly  
2 swimming club, and with his friends and family.  
3 Particular meetings involving particular associates  
4 which are now identified as being of central importance  
5 would have seemed like ordinary life at the time.

6 Third, sir, the Osman test enjoins the court to  
7 consider not just whether there were additional  
8 investigative steps which could have been taken, but  
9 whether there is an arguable case of failure to take  
10 reasonable steps. The court has made clear, and we have  
11 cited Re Officer L in this regard, that when assessing  
12 the reasonableness of the steps taken by the State to  
13 protect its citizens from threats to life, both the  
14 extent of those threats and the resources available to  
15 meet them are important considerations.

16 The context for any assessment of whether there is  
17 an arguable case of a failure to take reasonable steps  
18 in this case is the uniquely intense operational  
19 environment in which MI5 was operating at the time.  
20 Witness L, I would respectfully suggest, was a measured  
21 and thoughtful witness. His judgments, including  
22 judgments of an operational nature, such as the likely  
23 real-time response of investigators to the attackers'  
24 activities on 3 June, had they been known, should carry  
25 the weight that comes from that level of accumulated

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1 expertise and experience.

2 In any case, he was certainly not a witness who was  
3 given to exaggeration or hyperbole. So when he said  
4 that the first half of 2017 was the most alarming time  
5 he has ever experienced in his 28-year career in counter  
6 terrorism, you can be confident of his assessment of the  
7 state of the threat.

8 Now, as you've heard, difficult decisions regarding  
9 prioritisation of finite resources have to be taken on  
10 a daily basis. In order to meet the most immediate  
11 threats those decisions have to be taken in real time by  
12 trying to anticipate what several thousand subjects of  
13 interest might be intending to do next.

14 The complexity and difficulty of that task can  
15 hardly be overstated. The regularity with which those  
16 decisions prove to be correct, as illustrated by the  
17 number of plots detected and prevented during this  
18 period, including the 14 you've heard about since  
19 Westminster, demonstrates the skill and experience that  
20 MI5 is able to bring in its counter terrorism  
21 operations.

22 Now, this consideration is not merely relevant to  
23 suspension decisions, about which you have heard some  
24 criticism from Mr Patterson this morning, it's also  
25 relevant to your assessment of whether there is

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1 an arguable case of failure on the part of MI5 to take  
2 some additional investigative step which might have  
3 revealed some additional intelligence .

4 For example, and as correctly pointed out to you by  
5 Counsel to the Inquest in the course of the evidence,  
6 the reconstruction that has been presented to you of the  
7 attackers' movements on 3 June has been hundreds, if not  
8 thousands of hours in the making. It has drawn on  
9 countless sources of public and private CCTV, much of  
10 which could not have been accessed at the time. It has  
11 involved the interviewing of numerous witnesses, the  
12 examination of seized media devices, the analysis of  
13 geolocation data. Any consideration of what MI5 might  
14 have discovered had it been maintaining live coverage of  
15 Butt on the day of the attack has to grapple with the  
16 realities of what that coverage would have needed to  
17 entail in order to provide anything like the picture  
18 with which the court has now been presented.

19 It also has to grapple with the question of whether,  
20 given the operational environment at the time, and the  
21 other threats with which MI5 was faced, including cases  
22 where there was intelligence to indicate active attack  
23 planning, the absence of that sort of coverage might  
24 even arguably be characterised as a failure to take  
25 reasonable steps.

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1 With respect, the submissions from the families this  
2 morning have failed to grapple with these important  
3 considerations, and have proceeded instead by advancing  
4 a number of general observations of, we would  
5 respectfully observe, limited assistance, to the effect  
6 that resources should not be used as an excuse -- which  
7 they are clearly not -- or there should have been  
8 a request for more funding, an analysis the obvious  
9 limitations of which you, sir, have pointed out on more  
10 than one occasion in a context where the critical  
11 resource is the expertise of highly trained  
12 investigators .

13 I don't wish to labour this point unnecessarily, but  
14 there is repeated reference in the submissions you have  
15 received to "gaps in coverage", or information such as  
16 the buying of knives or wine bottles or meetings such as  
17 the one on 29 May without any analysis of the nature and  
18 extent of the coverage that would have been required in  
19 order to fill those gaps or acquire that knowledge.

20 Without going into operational detail, it will be  
21 readily appreciated that the level of coverage that  
22 would be required in order to monitor what Redouane was  
23 putting in his shopping basket or to identify that the  
24 attackers had a conversation late at night on the street  
25 would be extremely intensive. Even if it were possible

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1 to maintain coverage of this intensity, the Osman  
2 formulation requires the court to consider whether, in  
3 the context of the intelligence picture at the time,  
4 which revealed no evidence of attack aspirations since  
5 mid-2015, a lack of such coverage might properly be  
6 described as a failure and, moreover, a failure to take  
7 reasonable steps.

8 Sir, I note that that probably takes me to 12.55.  
9 I'm well over halfway through but I will need a few  
10 minutes after lunch, if I may.

11 THE CHIEF CORONER: That's fine, Mr Sheldon. We will break  
12 there and pick up at 2 o'clock. Thank you.

13 (12.56 pm)

14 (The Luncheon Adjournment)

15 (2.05 pm)

16 MR SHELDON: Sir, as to the last of the four points I wanted  
17 to make regarding the framework under which the analysis  
18 of whether there is an arguable case should be  
19 conducted, we would take no issue at all with the  
20 submissions of Counsel to the Inquest to the effect that  
21 the threshold for arguability is, in this context, as in  
22 many others, a low one, and we would acknowledge that  
23 there is a very significant difference between a finding  
24 that the evidence discloses an arguable breach of the  
25 operational duty such as to engage Article 2, and a

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1 conclusion that criticism of MI5's investigation should  
2 be included in your conclusions. Those are two very  
3 different things.

4 However, we do note in our submissions that the  
5 gloss placed on the conventional language of arguability  
6 or prima facie case in the case of AP, cited both by  
7 Counsel to the Inquest and Mr Patterson, namely that it  
8 should be defined as anything more than fanciful, is not  
9 one that has been adopted either by the higher domestic  
10 courts or by Strasbourg.

11 Now, I note, of course, Counsel to the Inquest's  
12 submissions this morning to the effect that there may be  
13 very little material difference between the  
14 formulations, and he may well be right about that, but  
15 we would respectfully observe that the potential  
16 disadvantage of the "more than fanciful" formulation is  
17 that it may provide encouragement to engage in what is,  
18 in truth, speculation, and the need to avoid building  
19 an analysis on speculation is the key point we would  
20 wish to emphasise in this aspect of the analysis.

21 We note and unreservedly endorse the conclusion of  
22 Counsel to the Inquest at paragraph 25 of their  
23 submissions that on the evidence in this case any  
24 analysis of whether some additional investigative step  
25 may have revealed knowledge of the attack plan

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1 necessarily requires a good deal of speculation. That  
2 is, we submit, clearly correct, and it amply justifies  
3 Counsel to the Inquest's conclusion that there is no  
4 proper place for criticism of MI5's investigation in  
5 a narrative conclusion concerned with causatively  
6 relevant matters.

7 However, we would observe that much of the analysis  
8 with which you have been presented in relation to the  
9 arguable case question also involves a significant  
10 degree of speculation. The evidence before the court  
11 would strongly suggest that none of the witnesses who  
12 have appeared before you, or who were interviewed by the  
13 police, including a large number of the attackers'  
14 relatives and closest associates, had any knowledge  
15 whatsoever that they were planning an attack. Those  
16 witnesses include people who lived with or associated  
17 closely with the attackers on a daily basis. None of  
18 them had any inkling that an attack was being planned  
19 and that, accordingly, the attackers posed a real and  
20 immediate risk to life.

21 This attack was conceived and planned in secret.  
22 A secret kept by all three of the attackers from those  
23 who were closest to them. The exhaustive post-attack  
24 investigation has not identified any intelligence that  
25 anyone other than the attackers themselves had knowledge

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1 of the attack plan, nor has it identified anything said  
2 or done by any of the attackers which, had it been heard  
3 or observed at the time, by whatever form of realistic  
4 coverage might have been required to do so, would have  
5 revealed that they posed a real and immediate risk to  
6 life.

7 It is speculative, and we would submit, inherently  
8 unlikely, that additional coverage of the UFC would have  
9 revealed that the attackers posed a real and immediate  
10 risk to life, there being no evidence that any attack  
11 planning took place there.

12 It is speculative that early identification of  
13 Redouane and/or Zaghba would have revealed that they  
14 posed a real and immediate threat to life, there being  
15 nothing in their respective histories or activities to  
16 indicate that they were planning an imminent terrorist  
17 attack on the streets of London.

18 It is speculative that additional information  
19 regarding Butt's extremist mindset, whether obtained  
20 from his devices or his relatives, such as Usman Darr,  
21 would have resulted in a chain of investigation leading  
22 to evidence of attack planning. And it is speculative,  
23 we would respectively submit, to assert, as Mr Patterson  
24 did this morning, without any evidential basis, we would  
25 suggest, that the attack planning was there to be

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1 discovered over many months, which we would observe is  
2 inaccurate in itself, and that more coverage of some  
3 unspecified nature would have detected it. There is no  
4 evidence, we submit, that might properly support that  
5 assertion.

6 Now, you have been invited by Counsel to the Inquest  
7 and Mr Patterson and Mr Adamson to pay particular  
8 attention to a number of specific aspects of the  
9 evidence for the purposes of analysing whether there is  
10 an arguable case for breach of the operational duty, and  
11 we have endeavoured to address each of those aspects in  
12 turn at paragraphs 41 to 71 of our written submissions,  
13 and I simply adopt, if I may, the detail of that  
14 analysis --

15 THE CHIEF CORONER: Yes.

16 MR SHELDON: -- in those paragraphs. But in the limited  
17 time available, I would like to illustrate some of the  
18 overarching points that I have just made by reference to  
19 one specific example, what has been referred to as the  
20 walk-and-talk on 29 May 2017.

21 Now, as to the events on 29 May, when Redouane  
22 dropped his phone before the three attackers engaged in  
23 a walk-and-talk along the street, we know about these  
24 events through the post-attack investigation which  
25 identified some private CCTV held by a nearby

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1 restaurant. This was an encounter which, it will be  
2 recalled, took place deliberately away from the UFC and  
3 in the open air. The UFC was not the location of this  
4 meeting. It is, we would submit, the only occasion  
5 identified by pre and post-attack investigation of the  
6 attackers behaving in an overtly suspicious manner.

7 Now, the coverage of Butt and/or the other attackers  
8 that would have been required in order to obtain useful  
9 intelligence of this meeting would have needed to be of  
10 the most intrusive and resource-intensive nature. It  
11 would have required the diversion of specialist  
12 resources from other investigations at the most alarming  
13 time in recent history in order to place under constant,  
14 live surveillance, an SOI in respect of whom there had  
15 been no intelligence relating to attack planning for  
16 approximately two years.

17 There is, I would respectfully submit, no arguable  
18 basis upon which it might be concluded that the failure  
19 to maintain this level of coverage of this SOI at this  
20 point represented a failure to take reasonable steps.

21 It is also very easy in hindsight to attribute this  
22 meeting a significance far beyond any realistic  
23 assessment at the time. Witness L agreed that dropping  
24 the phone would have been regarded as suspicious and  
25 meriting further investigation, but whilst we now know

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1 that this was a meeting of the three attackers a few  
2 days before they perpetrated a terrorist atrocity, at  
3 the time, it would have been viewed quite reasonably as  
4 an SOI having a conversation with two unknown associates  
5 in somewhat suspicious circumstances, and any assessment  
6 of what would constitute reasonable steps in response to  
7 that picture has to be conducted in that real-time  
8 context.

9 But even if the reasonable steps hurdle were  
10 cleared, it would still be necessary to identify  
11 an arguable case that the additional intelligence  
12 obtained as a result would have revealed a real and  
13 immediate risk to life, and this would require  
14 consideration of what might realistically have been done  
15 in response to the meeting of 29 May.

16 As Witness L explained, steps would have been taken  
17 to identify Redouane and Zaghba. That may or may not  
18 have been achieved before 3 June, but even if they had  
19 been identified in the course of a few days, what  
20 evidential basis is there, we would ask, for the  
21 conclusion that such identification would even arguably  
22 have resulted in knowledge that they, and/or Butt, posed  
23 a real and immediate risk to life?

24 Even if once they had been identified their  
25 association with Butt had been regarded as suspicious

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1 and meriting some degree of further investigation, there  
2 is no evidence, we suggest, to support the conclusion  
3 that such investigation would have led to knowledge of  
4 attack planning and any such analysis inevitably ends up  
5 in speculation.

6 So even if one takes the arguable high point of the  
7 intelligence picture as it now stands, the one occasion  
8 in respect of which Witness L stated that the behaviour  
9 of the attackers was overtly suspicious, and would have  
10 called for further investigation, a rigorous application  
11 of the Osman principles falls well short of establishing  
12 an arguable case, and we would submit that an analysis  
13 of each of the aspects of the chronology raised in the  
14 other submissions you have received follows a similar  
15 pattern.

16 In this regard, sir, we rely not only on our  
17 analysis of the evidence in our written submissions but  
18 also on the evidence of Witness L. He was, we would  
19 submit, a manifestly thoughtful and impressive witness.  
20 He has reflected very carefully on this case and he had  
21 a complete grip on its detail. In his professional  
22 judgment, borne of almost 30 years' experience in  
23 counter terrorism, he concluded that this was  
24 an investigation that was run effectively and well,  
25 a conclusion shared, as you know, by the panel of

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1 experts who conducted the post-attack review which  
2 described the decision-making taken during this  
3 investigation as "sound" in the light of what was known  
4 at the time and reflecting a number of aspects of good  
5 practice.

6 That post-attack review was, as you know, sir,  
7 described by Lord Anderson as exhaustive, careful and  
8 fair. We invite you to conclude that Witness L was  
9 right in his considered judgment and that on any fair  
10 analysis of the evidence before you, the threshold of  
11 an arguable case of breach of the Article 2 operational  
12 duty has not been met.

13 That conclusion is not inconsistent with the list of  
14 points identified by your counsel at paragraphs 15 to 17  
15 of their submissions, the points referred to by  
16 Mr Patterson euphemistically and, we would suggest,  
17 inaccurately as "the damning list". Those are points  
18 you will recognise and, as Counsel to the Inquest made  
19 clear, are ones upon which it might be said that there  
20 is an arguable case of breach of the operational duty,  
21 a case which they go on to submit has not ultimately  
22 been made out.

23 Now, in an investigation of this rigour and  
24 thoroughness, it is inevitable that it will be possible  
25 to identify at least some examples of additional steps

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1 that might arguably have been taken, and there is room  
2 for legitimate debate as to whether those points do or  
3 do not make out an arguable case, and that is the debate  
4 in which we respectfully engage with Counsel to the  
5 Inquest.

6 But they do not, and are not suggested to by their  
7 authors, undermine the ultimate conclusion that this was  
8 an effective and well run investigation.

9 None of that, of course, is to diminish in any  
10 respect the determination expressed by both the Director  
11 General and Witness L to squeeze every last drop of  
12 learning out of these tragic events. Your investigation  
13 of this case has revealed how extremely difficult it can  
14 be to identify attack planning of this nature. There  
15 is, as Witness L and Lord Anderson have both said, no  
16 cause for despair: most attacks are stopped most of the  
17 time, but in order for MI5 to continue to develop its  
18 capability to keep the public safe from acts of  
19 terrorism, it must learn the lessons of those cases  
20 where it has been unsuccessful. It has been, and  
21 continues to be, unstintingly self-critical in this  
22 regard, and we are grateful to you, sir, your counsel,  
23 and the counsel for the families for the rigour with  
24 which the analysis of MI5's involvement in this case has  
25 been conducted.

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1 May I finally take this opportunity, in case I don't  
2 get another one, to express on behalf of all of us  
3 involved in this case on behalf of MI5, our sincerest  
4 condolences to the families and loved ones of those  
5 killed in this attack, to those injured in it, and to  
6 all those who have been otherwise affected by it.

7 I would also wish to express our profound admiration  
8 for the dignity and restraint with which the relatives  
9 of those who died have conducted themselves during these  
10 proceedings.

11 Thank you, sir.

12 THE CHIEF CORONER: Thank you.

13 Submissions by MS LEEK QC

14 MS LEEK: Sir, on any account the events that unfolded on  
15 3 June 2017 were tragic on a national and global level  
16 and on a very personal level for the families of those  
17 involved.

18 Sir, the Home Secretary and those who work within  
19 the Home Office in protective security wish to offer  
20 their sincere condolences to the families of those who  
21 died in the attacks and to those who were injured.  
22 Nothing in the submissions I'm about to make is in any  
23 way intended to detract from that.

24 Sir, I propose to address you on three key points.  
25 First of all, the development of the law in relation to

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1 Article 2, in particular, how the general duty has  
2 developed. Secondly, the evidence-based facts in  
3 relation to protective security in the UK and, thirdly,  
4 the application of the facts to the law, in summary,  
5 showing that on no basis can it be said that there is  
6 an arguable breach of the general duty under Article 2.

7 May I begin by looking at the way in which the  
8 jurisprudence relating to Article 2 has developed.  
9 There has been scant, if any, analysis thus far of what  
10 the general duty actually encompasses in the submissions  
11 that we have heard.

12 Sir, it may seem obvious, but let us first remind  
13 ourselves that the Convention was drafted in the  
14 aftermath of World War 2 as part of a Europe-wide  
15 initiative to protect human rights and political  
16 freedoms in Europe. Let us turn next to the Article  
17 itself, subsection 1:

18 "Everyone's right to life shall be protected by  
19 law."

20 The next part of that is irrelevant.

21 Subsection 2:

22 "Deprivation of life shall not be regarded as  
23 inflicted in contravention of this Article when it  
24 results from the use of force which is no more than  
25 absolutely necessary."

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1 The use of force by State agents does not apply in  
2 this first part of these Inquests.

3 Sir, put to one side the operational duty. We  
4 submit that it was never intended by the European Court  
5 of Human Rights, or the domestic courts, nor can it be  
6 inferred from the jurisprudence, that Article 2, in  
7 particular, the general duty, would be used by the  
8 courts in an attempt to micromanage the law and the  
9 prioritisation of police resources in the way contended  
10 for. Because, sir, that is what is being submitted  
11 here.

12 It is accepted that the general duty may arise in  
13 a range of contexts, including environmental protection  
14 and public health. However, first of all, the nature  
15 and scope of the duty must be carefully identified  
16 having regard to the specific context of that duty and,  
17 secondly, the way in which it is said to have been  
18 breached must be identified with precision and by  
19 reference to evidence, sir, not simply as set out in  
20 paragraph 26 of Counsel to the Inquests' submissions,  
21 the systems for protective security in places vulnerable  
22 to vehicle-as-weapon attacks were deficient in 2016,  
23 2017, and superior systems may have led to the HVM  
24 measures being installed before the attack.

25 If we look carefully at the scope of the Article 2

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1 duty, we start with the case of McCann. Sir, that was  
2 the "Death on the Rock" case in Gibraltar, the first  
3 case relating to Article 2 in the context of the use of  
4 lethal force by State agents.

5 Sir, there was no definition or distinction at this  
6 stage between the operational and general duty. The  
7 refinement of the test required for Article 2 came later  
8 in the case of Osman. It was found in McCann that in  
9 the context of the use of lethal force by State agents,  
10 the State in its planning and control of the operation  
11 itself is required to minimise to the greatest extent  
12 possible the likely recourse to lethal force.

13 Sir, that was a case where it was known that there  
14 was a real and immediate risk to life from the use of  
15 lethal force by State agents.

16 Sir, moving on three years to Osman. As Ms Barton  
17 on behalf of City of London Police said in her  
18 submissions, we have to look carefully to see how the  
19 general and operational duties have evolved, and, sir,  
20 I don't apologise for going through it in some detail.

21 Sir, in paragraph 115, the court said as follows:

22 "The court knows that the first sentence of  
23 Article 2(1) enjoins the State not only to refrain from  
24 the intentional and unlawful taking of life, but also to  
25 take appropriate steps to safeguard the lives of those

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1 within its jurisdiction . It is common ground [the court  
2 said] that the state's obligation in this respect  
3 extends beyond its primary duty to secure the right to  
4 life by putting in place effective criminal law  
5 provisions to deter the commission of offences against  
6 the person, backed up by law enforcement machinery for  
7 the prevention, suppression, and sanctioning of breaches  
8 of such provisions."

9 Sir, that is the primary obligation under the  
10 general duty: an effective criminal law system  
11 encompassing independent police, security services,  
12 prison, judiciary, parole board, et cetera. The court  
13 said:

14 "It is thus accepted by those appearing before the  
15 court that Article 2 of the Convention may also imply,  
16 in certain well defined circumstances, a positive  
17 obligation on the authorities to take preventive  
18 operational measures to protect an individual whose life  
19 is at risk from the criminal acts of another  
20 individual."

21 Sir, at paragraph 116 it said:

22 "For the Court, and bearing in mind the difficulties  
23 involved in policing modern societies, the  
24 unpredictability of human conduct and the operational  
25 choices which must be made in terms of priorities and

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1 resources, such an obligation must be interpreted in  
2 a way which does not impose an impossible or  
3 disproportionate burden on the authorities .  
4 Accordingly, not every claimed risk to life can entail  
5 for the authorities a Convention requirement to take  
6 operational measures to prevent that risk from  
7 materialising. Another relevant consideration is the  
8 need to ensure that the police exercise their powers to  
9 control and prevent crime in a manner which fully  
10 respects the due process and other guarantees which  
11 legitimately place restraints on the scope of their  
12 action to investigate crime and bring offenders to  
13 justice, including the guarantees contained in  
14 Articles 5 and 8 of the Convention."

15 Sir, the unpredictability of human conduct and the  
16 difficulty of making choices in terms of priorities and  
17 resources go not just to the operational duty, but also  
18 to the general duty.

19 But, sir, so far as the general duty is concerned  
20 with preventing the criminal acts of third parties, it  
21 requires a state to have in place effective criminal law  
22 provisions, backed up by law enforcement machinery and  
23 systems, otherwise the operational duty requirements  
24 must be satisfied. And, sir, that is repeated in  
25 *Mastromatteo v Italy*, a 1997 case, as follows,

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1 paragraph 67:

2 "The state's obligation extends beyond its primary  
3 duty to secure the right to life by putting in place  
4 effective criminal law provisions to deter  
5 the commission of offences against the person, backed up  
6 by law enforcement machinery for the prevention,  
7 suppression and punishment of breaches of such  
8 provisions. Article 2 may also imply ..."

9 And then we go onto the certain well defined  
10 circumstances which you are clearly aware of. In  
11 paragraph 68, the court said this:

12 "That does not mean, however, that a positive  
13 obligation to prevent any possibility of violence can be  
14 derived from this provision. Such an obligation must be  
15 interpreted in a way which does not impose an impossible  
16 or disproportionate burden on the authorities bearing in  
17 mind the difficulties involved in policing modern  
18 societies."

19 Sir, it follows that the distinction between the  
20 general duty to put in place criminal law provisions to  
21 deter the commission of offences and the positive  
22 obligation to take preventive operational measures in  
23 certain well defined -- for good reason -- circumstances  
24 must be drawn.

25 Sir, there is too often a conflation of the general

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1 and the operational duties. By way of example, Counsel  
2 to the Inquests referred to *Kakoulli v Turkey* and  
3 *Makaratzis v Greece* in support of a proposition that  
4 the general duty may extend beyond written procedures to  
5 encompass the planning and control of operations,  
6 including police operations.

7 Sir, this is, in fact, a completely incorrect  
8 reading of the cases. *Makaratzis*, a 2005 case dealing  
9 with the State use of lethal force. The European Court  
10 found that the use of weapons by State officials had  
11 been regulated and was still being regulated by  
12 an obsolete and incomplete law for a modern democratic  
13 society. The court did not bring within the general  
14 duty the planning and control of the firearms operation  
15 but it found that there were no guidelines governing the  
16 use of force, ie the individuals against whom they were  
17 using lethal force, ie the State was using lethal force,  
18 were not adequately protected. So in that case it was  
19 found that at a high level the law was inadequate.

20 Paragraph 57 of *Makaratzis* says as follows:

21 "The first sentence of Article 2(1) enjoins the  
22 State not only to refrain from the intentional and  
23 unlawful taking of life, but also to take appropriate  
24 steps [and I quote] within its internal legal order to  
25 safeguard the lives of those within its jurisdiction .

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1 This involves a primary duty on the State to secure the  
2 right to life by putting in place an appropriate legal  
3 and administrative framework to deter the commission of  
4 offences against the person, backed up by law  
5 enforcement machinery for the prevention, suppression  
6 and punishment of breaches of such provisions."

7 And, sir, in paragraph 28 of Makaratzis, the court  
8 said:

9 "In light of the above, the Court considers that as  
10 far as their positive obligation under the first  
11 sentence of Article 2(1), to put in place an adequate  
12 legislative and administrative framework was concerned,  
13 the Greek authorities had not done, at the relevant  
14 time, all that could be reasonably expected of them to  
15 afford to citizens, and in particular to those such as  
16 the applicant, against whom potentially lethal force was  
17 used, the level of safeguards required to avoid real and  
18 immediate risk to life, which they knew was liable to  
19 arise."

20 So, sir, that comes within the operational duty.

21 It needs to be noted that both of these cases  
22 involve the deliberate taking of life by agents of the  
23 State and the instruction to them of when they were  
24 permitted to use lethal force, ie the State was engaged  
25 in dangerous operations.

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1 In Kakoulli, the court reached conclusions in  
2 relation only to the operational duty, namely that the  
3 use of force was neither proportionate nor absolutely  
4 necessary for the purpose of defending any person from  
5 unlawful violence or effecting a lawful arrest. There  
6 was no discussion of the nature of the general duty  
7 beyond the criminal law machinery that has already been  
8 discussed.

9 Sir, the case of Oneryildiz v Turkey has also been  
10 cited with regard to the State's duty to protect persons  
11 from environmental or industrial disasters. However, we  
12 would urge you to note the following: first, in the  
13 context of industrial activities which the court has  
14 deemed to be by their very nature dangerous, the  
15 European Court has placed special emphasis on  
16 regulations geared to the special features of the  
17 activity in question, particularly with regard to the  
18 level of the potential risk to human lives. They must  
19 govern the licensing, setting up, operation, security  
20 and provision of the activity, and must make it  
21 compulsory for all those concerned to take practical  
22 measures to ensure the effective protection of citizens  
23 whose lives might be endangered by, and I quote, "the  
24 inherent risks".

25 Sir, this relates to specific operations and is akin

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1 to high-level health and safety and licensing  
2 legislation, not, for example, the way in which health  
3 and safety employees are deployed.

4 Sir, in Oneryildiz, the court found that since the  
5 Turkish authorities knew or ought to have known that  
6 there was a real and immediate risk to persons living  
7 near the rubbish tip, they had an obligation under  
8 Article 2 to take such preventive operational measures  
9 as were necessary and sufficient to protect those  
10 individuals. As the court said, especially as they  
11 themselves had set up the site and authorised its  
12 operation, which had given rise to the risk in question.

13 But, sir, note that the court found that as to the  
14 policy to adopt in dealing with the social, economic and  
15 urban problems in that part of Istanbul, the court  
16 acknowledged that it was not its task to substitute its  
17 own views for those of the local authorities and, sir,  
18 what we say is that this is effectively what you are  
19 being asked to do.

20 Sir, the courts have consistently held that where  
21 the State is required to take positive measures, the  
22 choice of means is, in principle, a matter that falls  
23 within the contracting State's margin of appreciation.

24 Sir, in domestic law, in the case of AP, which has  
25 been cited with regard to what is meant by "arguable",

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1 more importantly at paragraph 73 Mr Justice Hickinbottom  
2 emphasised the purpose of the general duty. Sir, this  
3 was a case in which a young man was murdered by another  
4 young man when it was alleged the police and social  
5 services ought to have known of a real and immediate  
6 risk to his life. The operational duty was found not to  
7 have been engaged in that case. As to the general duty,  
8 Mr Justice Hickinbottom said this, at paragraph 73 for  
9 your reference:

10 "As the authorities make clear, one purpose of the  
11 general duty under Article 2 is to ensure that every  
12 state provides a functioning police force and effective  
13 judicial system that will provide a minimum standard of  
14 criminal law protection for the life of those in the  
15 jurisdiction of the State. It is not the purpose of the  
16 general duty to address the specific needs of particular  
17 groups unless the systems operate effectively to bar  
18 equal access to the criminal justice system for that  
19 group."

20 Sir, the point is that the European Court and  
21 domestic courts have repeatedly identified within the  
22 Article 2 duty, a duty to protect life by putting in  
23 place a framework of laws at a relatively high level of  
24 generality. It is hard to see how the specific  
25 definition of which places and spaces within the UK

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1 should be prioritised in terms of a likely terrorist  
2 attack falls within that general duty, and to this end,  
3 you cannot simply prioritise terrorism: how should  
4 police resources be deployed generally?

5 Sir, I do not ask this glibly, because if we drill  
6 down into what you are being asked to do, you are being  
7 asked to adjudicate on the prioritisation of police  
8 resources.

9 Insofar as you are being asked to find an arguable  
10 breach of the general duty to put in place specific  
11 procedures to protect the general public from terrorist  
12 attack, you would have to identify what policies and  
13 procedures should reasonably have been put in place and  
14 what failure in regulation is said to have occurred at  
15 that time.

16 Sir, it was said in Lopes De Sousa Fernandes v  
17 Portugal at paragraph 188, with which I know that you  
18 are familiar:

19 "For the Court's examination of a particular case,  
20 the question whether there has been a failure by the  
21 State in its regulatory duties calls for a concrete  
22 assessment of the alleged deficiencies rather than  
23 an abstract one."

24 The court's analysis of the general duty relates to  
25 a high-level provision of law enforcement provisions.

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1 What is being asserted here is that in effect the  
2 definition of "crowded places" and the prioritisation of  
3 locations within it, falls within that high-level  
4 provision.

5 Sir, there is a very real danger of looking at the  
6 general duty with the benefit of hindsight, knowing that  
7 the attack was on London Bridge.

8 THE CHIEF CORONER: I'm just going to interrupt you there.

9 Just to explain one bit of the language you used about  
10 my familiarity with the Portuguese case, simply that  
11 Parkinson was decided -- I think it was the first case  
12 which came before the High Court in this country after  
13 the Portuguese decision had come out. I know that you  
14 were in the case, but really just to explain to others  
15 that are listening, that's the reason why I do have  
16 a familiarity with it.

17 MS LEEK: Sir, yes.

18 Sir, having said that there's a real danger of  
19 looking at the general duty with the benefit of  
20 hindsight, knowing that the attack was on London Bridge,  
21 sadly an attack, and not necessarily this kind of  
22 attack, could have been anywhere. If the definition of  
23 "crowded place" had included all London bridges and the  
24 attack had happened outside a crowded pub, would there  
25 then be criticism of the definition for not including

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1 pavements outside pubs, or a lack of focus on events  
2 spaces if it had happened at a small event.

3 Sir, this all concerns a judgment call as to how  
4 best to prioritise resources and to coordinate those  
5 resources and that judgment call has been made with the  
6 benefit of the expertise of the OSCT, of JTAC, of the  
7 CPNI, of NaCTSO and of the Department for Transport, and  
8 you are being asked to substitute your own judgment for  
9 that of those experienced in law enforcement.

10 Sir, this is not about a catastrophic breakdown in  
11 a system. This is not about no system or no regulation,  
12 and nor is it a failure at a high level to provide  
13 policing at all.

14 Sir, we set out in our submissions the following:  
15 you have to bear in mind first of all that terrorism was  
16 one of a very large number of potential criminal threats  
17 facing the UK population. Within terrorism,  
18 vehicle-as-weapon attacks were not the only form of  
19 threat. The UK, and indeed the whole of Europe, were  
20 facing a wide and evolving range of terrorist  
21 methodologies. And, thirdly, it was not known on  
22 a general level whether an attack would take place  
23 anywhere in the UK or, if so, how, when or where. There  
24 are a number of questions that you would have to ask  
25 yourself and answer in order to find an arguable breach

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1 of the general duty.

2 But, sir, before you did that, you would have to  
3 look at what was, in fact, in place, and this takes us  
4 to the facts. The facts as to what was in place are  
5 clearly set out in our submissions. First, there is  
6 a robust framework of criminal law prohibiting  
7 the commission of terrorist acts and an extensive and  
8 highly sophisticated machinery of intelligence and law  
9 enforcement capability dedicated to enforcing that legal  
10 framework, including the police, security services,  
11 judiciary, prisons, probation, parole board, and so on.  
12 There has never been any suggestion in the domestic  
13 authorities, or by the Strasbourg court, that the UK's  
14 system of criminal law and law enforcement fails to meet  
15 the systemic obligation imposed by Article 2.

16 Sir, Mr Adamson put it on this basis: Article 2 is  
17 engaged in relation to bridge security matters. That is  
18 looking at the general duty on a micro level. We urge  
19 you not to do that.

20 Look at what was in place. Sir, the Home Office,  
21 through the OSCT, has developed the UK and its counter  
22 terrorism strategy CONTEST, which comprises  
23 a four-strand framework to reduce threats and reduce  
24 vulnerabilities: Prevent, Pursue, Protect and Prepare,  
25 and bear in mind that this is one small part of the UK's

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1 law enforcement procedure with regard to criminality  
2 generally.  
3 Second, the Protect strand is overseen by the  
4 Director for Protect, Prepare, Chemical Biological  
5 Radiological Nuclear Explosives and CT Science within  
6 OSCT which is supported by the Protect sub board. The  
7 board tracks activity across the Protect strand of  
8 CONTEST, including crowded places through the Crowded  
9 Places Working Group.

10 Sir, you would have to look at each of those strands  
11 separately and together to look at whether the general  
12 duty to prevent against terrorist murders has been  
13 satisfied.

14 Sir, between July 2012 and 2018 the CPWG oversaw the  
15 development of strategy for crowded places.  
16 Sarah Nacey, who has given evidence on behalf of the  
17 Home Office, chaired that group from 2016, and, sir, she  
18 explained that there came a time where reducing  
19 vulnerability to crowded places was looked at, and it  
20 was found that only 20% of those places had reduced  
21 vulnerability.

22 So using the expertise that was available, NaCTSO  
23 looked at a new framework for prioritisation. Sir, you  
24 are being asked to second-guess that framework.

25 Sir, the OSCT, through the Protect sub board and the

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1 CPWG had a strategic role in the development of  
2 protective security in crowded places. Its function was  
3 to set the overarching policy and strategy. Save for  
4 the assertion that the definition of crowded places was  
5 too rigid as London Bridge did not fall within it, there  
6 has been nothing in the evidence to suggest that the  
7 strategy was inappropriate or in any way inadequate and,  
8 sir, it should be noted that the Inquest has not heard  
9 evidence from NaCTSO, the organisation tasked with the  
10 delivery of that advice.

11 Sir, NaCTSO and CTASAs, coming down to a micro level  
12 here, provide advice and guidance which are free and  
13 available to any owner or operator of crowded locations,  
14 whether public or private. They provide bespoke advice  
15 to places considered to be of heightened vulnerability  
16 through the prioritisation process, and, sir, that  
17 system is deliberately dynamic so that the police are  
18 able to respond to emerging threats and the needs of  
19 those with whom they engage. Advice and guidance are  
20 produced within a broad spectrum of attack  
21 methodologies.

22 Sir, the very fact that London Bridge was identified  
23 by the City of London Police, through an experienced  
24 CTSA as a vulnerable site demonstrates the flexibility  
25 and efficacy of the overarching system which relies on

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1 local CTASAs to identify vulnerable sites for protective  
2 security advice and guidance. So no properly arguable  
3 systemic failure has been identified in relation to any  
4 of these issues.

5 Sir, the workstream led by NaCTSO, which was fed  
6 into by experienced organisations, including JTAC and  
7 the CPNI, developed the new methodology for prioritising  
8 the provision of advice to the owners and operators of  
9 crowded spaces. This was an eminently sensible way of  
10 identifying how best to prioritise resources.

11 Sir, we have not heard any suggestion or any  
12 evidence in relation to what might have been a better  
13 way of prioritising resources. Assuming that the  
14 prioritisation of resources is sensible, we have not  
15 heard any suggestion of how to do that.

16 Sir, one only has to look at paragraph 28 on page 24  
17 of CTI's submissions to understand how flawed the  
18 argument is.

19 THE CHIEF CORONER: Sorry, just give me that page again?

20 Page 24?

21 MS LEEK: It's paragraph 28 on page 24 of CTI's submissions.

22 THE CHIEF CORONER: Yes, I've got it. Thank you.

23 MS LEEK: Sir, they set out there in simple terms the  
24 systems of the State for having physical protective  
25 security installed in sites across the UK, but, sir,

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1 even before one gets to that level of specificity, one  
2 has to remember that that forms one small part of the  
3 general duty to protect against criminal acts.

4 Sir, they set out the level of OSCT and NaCTSO, the  
5 sensitive criteria. They set out that the sites were  
6 subject to proactive advice and engagement. They state  
7 that other sites could be subject to advice from CTASAs.  
8 Effectively, sir, echoing what we have said.

9 Sir, this criticism appears to be twofold: that  
10 there was no specific statutory or regulatory duty  
11 governing the owner or authority's duty to assess sites  
12 and install protective security and, secondly, that the  
13 prioritisation system could, in some undefined way, have  
14 been better.

15 Sir, these criticisms are far removed from what is  
16 envisaged by the general duty. The system for the  
17 delivery of protective security advice and guidance  
18 encompassed not only a guiding definition to enable  
19 bespoke police delivery to prioritised places, but the  
20 model allowed for the provision of self service, free  
21 and accessible advice to all places, whether or not they  
22 fell within the definition.

23 Sir, coming back to the Oneryildiz case, a case  
24 where the government itself was involved in dangerous  
25 activity, the criticism there was that there was no

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1 advice available and that there was no system and that  
2 there was no regulation.

3 Sir, may I also look at paragraphs 31 to 33 of CTI's  
4 submissions. In paragraph 33, it is said as follows:

5 "Sarah Nacey, the Deputy Director for Protect and  
6 Prepare in the OSCT said that, with respect to  
7 protective security 'You need to make sure that you are  
8 dynamic and able to respond to events'. Furthermore,  
9 she very fairly accepted concerns that the definitional  
10 tests for a ... Crowded Place are too rigid."

11 Sir, with respect, that is an inaccurate  
12 characterisation of her evidence. She accepted and  
13 understood that it was a legitimate concern of the  
14 families who had lost loved ones on the bridge that it  
15 might not include places that the layman would count as  
16 crowded. She did not accept that it was too rigid.

17 Sir, at page 128 of her evidence, she said:

18 "Any location that is crowded will, by its very  
19 nature, be attractive to terrorists and crowd density  
20 was a way in 2014 of trying to differentiate between  
21 those areas that would be most attractive."

22 And, sir, she has indicated also that a new model in  
23 response to the emerging threat is now being trialled at  
24 two locations.

25 So, sir, it's our submission that these are matters

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1 which may go to Prevention of Future Death Reports but  
2 certainly do not come within the high level of  
3 generality required for the general duty to protect  
4 against general criminality and terrorism specifically.

5 Sir, as we've said, this forms one small part of the  
6 comprehensive Protect strategy which forms one part of  
7 the overarching CONTEST strategy. Second, owners and  
8 operators have primary responsibility for protective  
9 security on their premises. Third, in the current case,  
10 both the City of London Police and the City of London  
11 Corporation were aware of their obligations and were  
12 taking steps to mitigate the risk.

13 Sir, the fact that something is not carried out or  
14 executed in a particular way does not per se make it  
15 a breach of the general duty. Insofar as it is  
16 suggested that Sarah Nacey's acceptance that the  
17 definition may need refining automatically discloses  
18 a breach of the general duty, this is an erroneously  
19 simplistic way of approaching the general duty.

20 The fact that there are experienced organisations  
21 constantly evaluating the efficacy of the model for  
22 prioritising resources demonstrates clearly that the  
23 general duty is, in fact, being discharged.

24 Sir, may I address just a small number of particular  
25 submissions advanced by Counsel to the Inquests.

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1 First of all, it is suggested that if a less rigid  
2 approach had been adopted, London Bridge would have been  
3 accorded a higher priority in 2016 and early 2017,  
4 having regard to the attacks in Nice and Berlin. Sir,  
5 this is a flawed analysis. First, what less rigid  
6 approach is being postulated? Nice and Berlin were  
7 considered in real time by expert law enforcement  
8 practitioners to be indicative of the methodology  
9 changing to attacks on large events, rather than on  
10 streets. You are being asked to second-guess that with  
11 the benefit of hindsight.

12 Secondly, it ignores the fact that PC Hone had local  
13 knowledge and did, indeed, identify London Bridge as  
14 potentially at risk. This is exactly what CTSAs were  
15 supposed to do at a local level.

16 The evidence was clear: temporary hostile vehicle  
17 mitigation would not have been installed because of the  
18 threat picture. We were not dealing with an in extremis  
19 situation. Permanent HVM was in fact proposed for  
20 consideration in any event and would have taken years to  
21 install.

22 Sir, it is suggested further that there was a lack  
23 of clear lines of responsibility. Sir, the evidence was  
24 given that the lines of responsibility were clearly  
25 defined in the CONTEST strategy. Responsibility

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1 cascaded down from the Home Office via the OSCT to  
2 NaCTSO and CTSAs who were responsible on a policing  
3 level for the provision of advice to owners, operators  
4 and local authorities. PC Hone was in regular contact  
5 with the City of London Corporation.

6 Sir, it is suggested that there is a lack of clear  
7 procedures for the prompt consideration of temporary and  
8 permanent hostile vehicle mitigation on all streets at  
9 that time. Again, this is a hindsight issue against  
10 which you have to guard. At the time of the attack on  
11 London Bridge, there had been one such attack, which had  
12 been considered by law enforcement agencies to be  
13 a precursor to the attempted attack on Parliament.

14 Sir, it is easy to say with the benefit of hindsight  
15 that there was a high-level failure to consider the  
16 installation of temporary or permanent barriers on all  
17 busy streets. This fails entirely to take into  
18 consideration that resources and expertise are finite  
19 and that the threat picture is complex and changing.

20 Sir, late 2016/early 2017 is picked out because of  
21 the Nice and Berlin attacks and because it is said they  
22 showed that the attack methodology was changing to  
23 vehicle-as-weapon attacks.

24 Sir, these were seen as attacks on events but were  
25 two of numerous worldwide terror attacks with

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1 wide-ranging methodologies carried out in the previous  
2 two years: 2014 Malaysia Air bombing; January 2015,  
3 Île -de-France attacks; November 2015,  
4 Bataclan; March 2016, Brussels bombings and May 2017,  
5 Manchester Arena.

6 Sir, should resources have been moved from events to  
7 streets in the light of this? There is no proper  
8 evidential basis for concluding that superior systems  
9 would have led to HVM on the bridge. What is the  
10 superior system that is suggested and how would it, in  
11 fact, have made a difference.

12 Sir, the bridge was, in fact, considered. No  
13 superior system could have done more than that. Given  
14 the threat picture, there was no basis for deploying the  
15 National Barrier Asset and permanent HVM had been  
16 suggested for consideration.

17 Sir, the purpose of the general duty implied under  
18 Article 2 by the courts is not, with the benefit of  
19 hindsight, to make suggestions as to specific practices  
20 and procedures which could have been done better.

21 It has been said, sir, that there is no specific  
22 statutory or regulatory duty governing the owner or  
23 authority's duty to assess sites and install protective  
24 security. Sir, we have heard that in fact, section 17  
25 of the Crime and Disorder Act addresses the duty to

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1 assess sites in relation to crime, and, sir, it is not  
2 just barriers which form part of protective security.  
3 One has to look at policing generally on the streets.  
4 There was CT policing on high alert in London at the  
5 time.

6 Into that has to be fed Project Servator, forming  
7 part of the general duty, and the widespread advice and  
8 campaigns promulgated by NaCTSO as the organisation  
9 responsible for policing terrorism.

10 Sir, with regard to causation, and finally, whatever  
11 has been suggested with regard to causation, it was made  
12 absolutely clear by City of London Police that neither  
13 temporary nor permanent barriers would have been  
14 installed on London Bridge by 3 June 2017.

15 Sir, I don't propose to address you in relation to  
16 vehicle hire, unless that is something that would  
17 specifically assist you.

18 THE CHIEF CORONER: No, thank you.

19 MS LEEK: Thank you, sir.

20 THE CHIEF CORONER: I'm just looking, Mr Horwell, at you,  
21 but I'm not sure whether you are next?

22 MR HORWELL: I sadly believe I am, sir.

23 THE CHIEF CORONER: Right.

24 Submissions by MR HORWELL QC

25 THE CHIEF CORONER: I will look at you Mr Horwell.

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1 I'm sorry about this obstruction --

2 MR HORWELL: No, not at all. I'm more than used to jurors  
3 putting their heads in their hands whenever I stand up,  
4 sir, so whatever combination works.

5 Those who have sat through the evidence of the last  
6 eight weeks will have seen both the worst and the best  
7 of humanity. The worst from the godless, merciless acts  
8 of three murderers, and the best from the extraordinary  
9 courage and responses of so many of those who were  
10 brought into reach of this barbaric attack.

11 Those who ran towards danger. Those who confronted  
12 and took on the terrorists, police officers and public  
13 alike. One young man armed with only a skateboard. The  
14 offer of a hand to a woman who had fallen in the rush to  
15 escape. Those who stayed and cared for the injured  
16 regardless of the danger to themselves. Account after  
17 account of heroism, love and decency. Everyone who died  
18 was deeply loved and shall forever be missed. Those are  
19 the stories that should be told from these horrific  
20 events.

21 Inquests are investigations into the presence or  
22 otherwise of fault, and so the suggestions of fault  
23 came: the intelligence and police services are  
24 incompetent, a firearms officer was in dereliction of  
25 his duty for stopping and attending to a dying woman

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1 whose injuries were beyond our imagination, and the  
2 London Ambulance Service is accused of cowardice.

3 In respect of public institutions, there has in fact  
4 been much evidence of which the public can be proud, but  
5 good news does not make headlines. These are just some  
6 of the good news stories: the decision taken in 2016 to  
7 increase significantly the armed police capability in  
8 London, that must have had an impact on the events that  
9 night. Sir, you heard that by the time of this attack,  
10 the number of ARVs on duty had been increased by more  
11 than double, hence the remarkably quick response times,  
12 and the enormous amount of work and preparation that had  
13 taken place since the 2008 Mumbai attacks that led to  
14 Operation Plato.

15 We suggest that there can be no doubt that the  
16 declaration of Plato and all that so swiftly followed  
17 from it, the united forces of the police service, the  
18 ambulance service and the London Fire Brigade, that  
19 declaration saved lives that night, and the efforts of  
20 Superintendent McKibbin and others have not been in  
21 vain.

22 The timeline we provided shows that casualty  
23 evacuation was very effective. The injured had not been  
24 abandoned for three hours. That myth must end. Those  
25 who died had been left for some hours, and that is

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1 a very different story.  
2 That is not to say that there is not room for  
3 improvement. No spontaneous operation involving so many  
4 hundreds of people from the emergency services can ever  
5 be perfect, but we submit that public servants served  
6 their masters well that night, and for that we should  
7 all be grateful.

8 Now, sir, our written submissions are long in order  
9 that these oral submissions can be short, and our  
10 principal submissions on law are as follows: first, that  
11 Article 2 is not engaged in respect of SO15's  
12 involvement in this investigation, and, secondly, that  
13 if engaged, Article 2 has not been breached, and that is  
14 for two reasons: first there has been no failure by SO15  
15 to protect the lives of those who died, and, second, and  
16 in any event, causation has not been established.

17 Now, on engagement your counsel have set out their  
18 views as follows: that Article 2 is engaged because it  
19 is arguable there were breaches by the State of its  
20 operational duty to take steps to stop the attack, and  
21 uppermost in that contention is the submission that the  
22 threshold of whether a breach is arguable is a low one,  
23 also described as being "anything more than fanciful".

24 It is unfortunate that there are so many  
25 formulations which seek to define the threshold of

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1 engagement and, sir, only lawyers together could submit  
2 possibly 50 to 60 pages on the law in an attempt to  
3 define the threshold, and then come the moment of oral  
4 argument, agree that there's probably nothing between  
5 them.

6 THE CHIEF CORONER: Yes.

7 MR HORWELL: That is why English lawyers are revered  
8 throughout the world.

9 THE CHIEF CORONER: The same for judges. It used to be  
10 said, Mr Horwell, in the House of Lords that they could  
11 find quite a long way of saying something different only  
12 to agree that in fact they were saying the same thing.

13 MR HORWELL: The same thing, yes.

14 Doing our best to cut through the labyrinthine legal  
15 pronouncements, I think it is accepted, I'm sure it is  
16 accepted, that there is little difference between those  
17 formulations but there is, perhaps, a difference, and we  
18 suggest that the threshold applicable to the positive  
19 obligation on a State to protect life in counter  
20 terrorism policing should be set at arguable breach, and  
21 I think the point that we wish to make, so well covered  
22 by Mr Sheldon, is that that threshold of arguable breach  
23 should not be qualified in an effort to reduce it.

24 Your counsel have helpfully listed a number of  
25 suggested arguable breaches. Our first submission is

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1 that MI5 and SO15 appear to have been treated as one  
2 entity, which cannot be correct. They are separate  
3 interested persons, they are close, but nonetheless  
4 separate organisations. They work in partnership, but  
5 require separate consideration.

6 I'm going to take my time on an analysis of those  
7 arguable breaches because it is common ground between  
8 your counsel and ourselves that if there has been  
9 an arguable breach there is no breach of Article 2, and  
10 so I'm going to concentrate my time on the differences  
11 that there are between us.

12 Now, the arguable breaches suggested by your counsel  
13 arise from the following events: the failure by MI5  
14 properly to record and follow up the anonymous call to  
15 MI5 in mid-2015. And what I would like you to do, sir,  
16 is to concentrate on the dates of these events because  
17 they are important.

18 Secondly, the failure by SO15 properly to assign and  
19 follow up Usman Darr's Anti-Terrorism Hotline call to  
20 SO15 on 30 September of that same year, 2015. M  
21 accepted that the failure properly to assign that call  
22 was a failing.

23 Third, the failure properly to assess the material  
24 found on Butt's phone viewed by SO15 and MI5. Butt's  
25 phone was seized, of course, in October 2016.

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1 Fourth, MI5's inappropriate assessment of Butt,  
2 having a weak capability in an era of basic, low  
3 methodology attacks.

4 Fifth, Butt's risk factors. It is suggested that  
5 they were not properly taken into account, in  
6 particular, his aspirational attack planning, which was  
7 known back in 2015, his aspiration to travel to Syria,  
8 his links to ALM, his history of violence as low in  
9 order as that was, and the fact that he had not been  
10 working for many months, meaning that his daily routine  
11 was not fully understood.

12 Sixth, the failure to take sufficient account of  
13 Butt's association with the gym.

14 Seventh, the failure to discover Butt's association  
15 with the Ad-Deen primary school.

16 Eighth, the fact that Redouane and Zaghba were not  
17 identified, and, ninth, insufficient attention by MI5 to  
18 the 7 March 2017 meeting.

19 Now, your counsel's essential approach is that but  
20 for those arguable breaches, there would have been  
21 surveillance on 3 June, and that might have led to the  
22 detection and cessation of this conspiracy.

23 Now, before turning to the law, and indeed, the  
24 facts, it is obvious that there is an extraordinary  
25 degree of speculation in that analysis, and we suggest

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1 that the analysis is not sound when examined against the  
2 chronology of the relevant events.

3 We respectfully suggest that the conclusion is  
4 misplaced because all of those events that I have listed  
5 go back some way in the past. The two telephone calls,  
6 as I have said in that summary, were made as far back as  
7 2015, and for reasons that we have set out in detail in  
8 our written submissions, there is every reason to  
9 believe -- certainly in relation to Darr's, and we make  
10 no comment on the other -- every reason to believe that  
11 nothing further would have come of it.

12 Butt's phone was seized in October 2016, and the  
13 media content was considered by the experts as  
14 unsurprising, an assessment with which this court should  
15 be slow to dismiss. What is horrifying to us may well  
16 be commonplace to counter terrorism operatives.

17 Above all else, nothing on the phone revealed  
18 evidence of attack planning. The weak capability  
19 assessment of Butt was in September 2015. It was, of  
20 course, increased in May 2017. The plan to travel to  
21 Syria was known in late 2015/early 2016. Butt's  
22 association with the gym went back many months to the  
23 summer of 2016, I think is the earliest date in the  
24 evidence. That association with the gym was discovered  
25 by MI5 in the late autumn of 2016, and, sir, for the

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1 reasons expressed at paragraph 96 of our written  
2 submissions, the gym was almost certainly not considered  
3 a safe venue for conspiratorial discussions. Why else  
4 have that suspicious conversation outside of the gym  
5 when they could so easily have had it inside? And,  
6 therefore, we suggest, save for one meeting, the gym is  
7 irrelevant to this investigation.

8 Butt's association with the school went back many  
9 months. Butt's association with Redouane and Zaghba was  
10 certainly ongoing from at least January 2017, and some,  
11 probably much of it, was social. MI5 was aware of the  
12 7 March 2017 meeting in the gym at about the time it  
13 took place, and properly took it into account.

14 All of this could so easily have been known by  
15 competent investigators, is one of the suggestions that  
16 has been made. Well, we'll follow that suggestion to  
17 its end. If, say, by January or February all of that  
18 knowledge had been obtained, save, of course, for that  
19 of the March meeting, why should it have led to  
20 surveillance on Butt immediately before and on the day  
21 of the attack? That, we suggest, is not a logical  
22 conclusion. No one has identified any trigger, even on  
23 that analysis, that would have led to surveillance on  
24 3 June. That, we suggest, is a significant weakness in  
25 the argument that there was an arguable breach.

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1 We suggest that in all likelihood, increased  
2 surveillance on Butt in January or February would have  
3 revealed no more than social contact between Butt,  
4 Redouane and Zaghba, and no doubt others, because they  
5 did have social contact and were obviously surveillance  
6 aware. What they were doing was done in secret. They  
7 did not want anyone to know, for obvious reasons, of  
8 their attack planning, as limited as we suggest it must  
9 have been. They did not even trust the gym as a safe  
10 place.

11 Why on earth, we submit, should events that go back  
12 so far, or could have been known for so long, have led  
13 to surveillance on Butt immediately before and on the  
14 day of the attack. The submission that there was  
15 an arguable breach depends on that factual conclusion,  
16 and we suggest with respect that that contention is  
17 unsustainable.

18 There can have been no sensible reason why  
19 surveillance should have been conducted either  
20 immediately before or on the day of the attack. No  
21 event has been identified which could or should have  
22 caused such surveillance suddenly then to have occurred.  
23 That is why we have submitted in writing that for this  
24 contention to work, there would have had to have been  
25 24-hour-a-day surveillance on Butt, possibly for months,

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1 surveillance that would, of necessity, have included  
2 surveillance on 3 June, and no one has suggested on what  
3 was known or should have been known that that could have  
4 been justified.

5 The alternative is that for reasons unspecified,  
6 surveillance should suddenly have been ordered on Butt  
7 on 3 June, and that is a proposition based in the realms  
8 of fiction, we suggest, and not reality.

9 Mr Patterson argued the following this morning: he  
10 said that Mr Hough spoke about continuous monitoring,  
11 but nobody is arguing for that. Mr Patterson added what  
12 Lord Bingham says is required is reasonable  
13 investigation, and that is where he, Mr Patterson, would  
14 focus his submissions.

15 Now, if Mr Patterson is not arguing, and obviously  
16 for good and sensible reasons, that continuous  
17 monitoring could have been justified, how else could  
18 there have been surveillance on 3 June? As we have  
19 submitted, no one has identified the trigger for such  
20 surveillance.

21 And so stripping all of this to its bare essentials,  
22 what would have been required is a random act of luck  
23 for there to have been close, continuous surveillance on  
24 3 June, and luck is nowhere near Article 2 territory.

25 SO15 was looking for intelligence or evidence of

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1 attack planning. Then and only then would there have  
2 been a real and immediate risk to life. No such  
3 intelligence or evidence was available to SO15 and none  
4 could or should have been obtained in the real world,  
5 let alone the world of 2017, a world of unprecedented  
6 threat from terrorism with the attendant need to deploy  
7 resources in a proportionate way.

8 L and M are particularly well placed to assess  
9 intelligence and to know how to respond to it in  
10 a responsible and proportionate way. As both we and MI5  
11 have submitted, this court must be slow in concluding  
12 that one or both of them was deficient. Their skills,  
13 and those of their respective agencies, did not suddenly  
14 vanish during the course of this investigation. That  
15 they are experts does not imply that they are  
16 infallible, of course it doesn't, but lay people should  
17 not in any sense rush to judgment against them, even on  
18 this low threshold.

19 A very good example of the need for caution is the  
20 one already given, namely the material on Butt's phone:  
21 repugnant and sensational to lay people; unsurprising  
22 and commonplace to counter terrorism experts.  
23 Mr Patterson complained that this revealed  
24 a laissez-faire attitude. We could not disagree more.  
25 It reveals the considered approach of experts, experts

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1 who have seen more of this sensational material than we  
2 would ever want to. Experts who therefore can  
3 objectively and professionally evaluate it.

4 To summarise, therefore, on the analysis of your  
5 counsel, and the critical requirements in that analysis  
6 for there being surveillance on 3 June, Article 2 is not  
7 engaged in respect of SO15's investigation of Butt.  
8 There was no more SO15 could or should have done by  
9 then, and we suggest no more that it could or should  
10 have done that would have revealed evidence of attack  
11 planning, which is the only issue that matters, and  
12 certainly no more than it could or should have done  
13 which would have led to surveillance on 3 June.

14 However insignificant the finding of engagement may  
15 be, we do suggest that on the evidence, there is  
16 insufficient evidence to support an arguable case of  
17 an Article 2 breach. It is a matter, for obvious  
18 reasons, that we take seriously, especially as this  
19 investigation was in the intelligence phase and SO15 did  
20 not have full access to that intelligence.

21 As I have said, if you find against us on this, then  
22 we are, of course, in full agreement with your counsel's  
23 submissions, namely that there was no breach of  
24 Article 2. The evidence simply is not there, and we  
25 suggest that such a finding would be irrational.

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1 Throughout this Inquest there has been a surfeit of  
2 speculation and hindsight. The time has come for that  
3 to end. The skill and dedication of Operation Datal  
4 that has so impressed this court is that of SO15  
5 generally. In his statement, M said that he and his  
6 officers come to work each day to do their utmost to  
7 protect the public from terrorism, and he described how  
8 devastated all of them were when this attack succeeded.  
9 Their commitment to protect this country's citizens and  
10 visitors remains unwavering. We are all so desperately  
11 sorry for what happened, but there does not always have  
12 to be blame or fault.

13 THE CHIEF CORONER: Thank you very much.

14 Mr Horwell, what I'm going to suggest is we take our  
15 break there, perhaps just a 10-minute break. But  
16 I might ask whether someone might just remove this  
17 screen because I don't think I'm going to need it and it  
18 will mean that I won't have to ...

19 MR HOUGH: Sir, just so you know, I may ask you to look at  
20 one thing on the screen in reply.

21 THE CHIEF CORONER: Right, thank you. What we will do is  
22 we might just move it closer to the speaker.

23 We will take a break there.

24 (3.29 pm)

25 (A short break)

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1 (3.42 pm)

2 Submissions by MS BARTON QC

3 MS BARTON: Sir, in making these submissions on behalf of  
4 City of London Police they should not be taken as saying  
5 that there is nothing that could have been done better,  
6 that there are no lessons that should be learned, and  
7 that there are no changes to be made for the better.

8 Sir, you may be sure, and so may the families in  
9 this case, that the City of London Police are not  
10 complacent: they are utterly committed to taking away  
11 every possible element of learning from this case.

12 The sympathies and condolence from all at City of  
13 London Police go out to the families and friends who  
14 lost loved ones in these terrible attacks and all those  
15 who were terribly affected by the horrific events.

16 Sir, it is never all right when people lose their  
17 lives and family and friends in tragic cases such as  
18 these, but those irrefutable facts cannot justify the  
19 imposition of an Article 2 duty if, in law, that duty  
20 does not exist, and this is particularly important, sir,  
21 where the consequences of the imposition of that duty  
22 rebound far beyond the walls of this court.

23 Sir, in addressing the issue of whether Article 2 is  
24 arguably engaged, and/or breached in this case,  
25 the Commissioner wishes it to be made clear that these

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1 are principled legal submissions, and the Commissioner  
2 positively invites you, sir, to make detailed findings  
3 of fact in your summing-up or ruling, whatever your  
4 ruling on Article 2.

5 So I turn firstly, sir, and very briefly, to the  
6 issue of the general duty under Article 2. As has been  
7 made clear, I hope, in our written submissions, the City  
8 of London Police recognises that there are a number of  
9 relevant authorities which suggest that the Article 2  
10 general duty is not engaged against any IP on the facts  
11 of this case, and there is a duty on the part of  
12 the Commissioner to draw the relevant authorities to  
13 your attention.

14 And, sir, they are authorities which require careful  
15 analysis because, as Mr Hough very fairly acknowledged  
16 this morning, he said, in making his submissions, the  
17 absence of a comparable case on the authorities "should  
18 not prevent a duty being developed in the way we  
19 suggest". Thus Mr Hough has importantly acknowledged  
20 that to take the course suggested would involve  
21 a development of both the domestic and European case  
22 law.

23 Ms Leek has dealt with the issue of the general duty  
24 very clearly and succinctly, and of course you will no  
25 doubt be aware that the criminal law is only one aspect

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1 of the totality of the legal framework which sits within  
2 this jurisdiction. We also, of course, have civil law  
3 remedies, judicial review and misconduct and discipline  
4 as part of our legal processes, all of which can and  
5 perhaps are better suited, the latter, to the  
6 micromanagement of particular policies and procedures.

7 You may conclude that the detailed submissions made  
8 by Ms Leek on behalf of the Secretary of State  
9 illustrate the significant extent to which the current  
10 legal framework has in fact got to be developed in order  
11 to encompass the facts of these cases, and I say simply  
12 this, sir: that the submissions that have been made on  
13 behalf of the Secretary of State serve to underline the  
14 concerns flagged up by the City of London Police in  
15 their written submissions.

16 I then say no more about the engagement of the  
17 general duty, but turn to whether, if that general duty  
18 is engaged, it can properly be said that there was  
19 an arguable breach by the City of London Police.

20 The systems in place for protective security were  
21 imposed centrally upon all police forces, the City of  
22 London Police included. If that's right, then it's  
23 worthy of note that in accepting, as they must, the  
24 systems and procedures under which they worked, they,  
25 perhaps uniquely, went on to take individual steps to

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1 try to improve the situation with which they were faced,  
2 and there are specifics that I can point to that show at  
3 local level what additional systems supplemented the  
4 national guidance.

5 First of all, you have heard that the City of London  
6 Police repeatedly were involved in trials of counter  
7 terrorism tactics to improve their position. They  
8 created a specific role of counter terrorism  
9 coordinator, which was held by Sergeant Hone.  
10 Sergeant Hone supplemented the Crowded Places Model by  
11 creating a unique matrix, which caused him to identify  
12 London Bridge as a potentially vulnerable location  
13 outside the Crowded Places Model.

14 They commissioned the Cerastes report on protective  
15 security within the City, and having done that, they  
16 followed to the letter the recommendations in that  
17 report, by increasing the Servator patrols by 35% in the  
18 relevant period, and by considering the installation of  
19 HVM as recommended.

20 It is accepted by all in this case that the CTSA  
21 role is an advisory one, and in their advisory role, we  
22 heard that the Corporation of London was advised of the  
23 potential vulnerability following the Cerastes report  
24 and was provided both with the report and the summary.

25 Given the procedures which were in place, it was not

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1 within the power of the City of London Police to put  
2 temporary HVM on the bridge, because the only way of  
3 utilising the National Barrier Asset at that time was on  
4 the basis of intelligence or events.

5 And so just standing back for a moment from the  
6 alleged engagement and breach of the Article 2 general  
7 duty, in my submission, on behalf of the City of London  
8 Police, it is very difficult to see what more they could  
9 have done within the systems that were in place at that  
10 time, and, indeed, you will no doubt recall that  
11 Ms Nacey on behalf of the Home Office said that it was  
12 a gold standard service which Police Sergeant Hone had  
13 offered, exactly as they had envisaged that the systems  
14 would deliver.

15 Therefore, on the facts of this case, it's our  
16 submission on behalf of the City of London Police that  
17 the Article 2 general duty has neither been engaged nor  
18 breached.

19 The operational Osman duty, sir, I'm going to deal  
20 with very swiftly. It is submitted on behalf of the  
21 City of London Police that the facts of this case fall  
22 so far short of the Osman test that it is not even  
23 arguable that Article 2 is engaged on the basis of the  
24 facts. The engagement of Article 2, the operational  
25 duty, is effectively said to hang on the fact that

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1 London Bridge was recognised as a potentially vulnerable  
2 location, but we know from the case of Mastromatteo, in  
3 specifically paragraph 74, that the mere existence or  
4 a mere condition sine qua non does not suffice to engage  
5 the responsibility of the State under the Convention,  
6 and we would say that that is exactly how the  
7 operational duty is being sought to be engaged on the  
8 facts of this case.

9 We are in a position to address the issue of  
10 operational duty much more fully, however, we  
11 respectfully agree with your counsel on this issue that  
12 it does not apply on the facts of this case.

13 I turn then, sir, because of all of the submissions  
14 that have gone before, to the issue of the proposed  
15 narrative which is set out in paragraph 63 of your  
16 counsel's submissions, and what I say in general terms  
17 about any narrative, if you were to decide that  
18 Article 2 general duty was engaged, is that the terms of  
19 the narrative must reflect the breach that is in fact  
20 alleged, and what we have here in the course of that  
21 narrative at paragraph 63 is an assertion that there was  
22 a failure to implement appropriate hostile vehicle  
23 mitigation measures on the bridge.

24 There is no basis for saying that there's a failure  
25 if there is no positive duty which arises to require the

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1 HVM being placed on the bridge at that time. If there  
2 is no operational duty in this case, then the submission  
3 that we make is that if you decide the general duty is  
4 engaged, it is important to restrict the form of words  
5 to reflect the breach, which does not include a failure  
6 to implement.

7 So I have, at paragraph 5.5 of my submissions, set  
8 out the amended form of words which we suggest would  
9 meet the facts of the breach if found.

10 Sir, those are my submissions.

11 THE CHIEF CORONER: Thank you very much indeed.

12 Ms Simcock.

13 Submissions by MS SIMCOCK

14 MS SIMCOCK: Sir, thank you.

15 Sir, may I take this opportunity, in common with  
16 others, to offer my sincere sympathies and condolences  
17 to the families and friends of the deceased on behalf of  
18 all those at the London Ambulance Service.

19 Sir, you have our written submissions and I don't  
20 propose to repeat everything in them. I wish to deal  
21 only very briefly with proposed narrative conclusions.

22 We deal with these at paragraphs 27 to 35 of our  
23 written submissions. The LAS agrees with the  
24 formulation suggested by Counsel to the Inquests,  
25 subject to only one small amendment regarding the

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1 description of ambulance personnel who attended  
2 Christine Archibald. In relation to the suggested  
3 amendments by the families, regarding Sébastien Bélanger  
4 and James McMullan, these are dealt with at paragraph 29  
5 onwards of our submissions. The LAS again agrees with  
6 Counsel to the Inquests.

7 We agree that anything better identifying those  
8 giving medical assistance to the deceased and that they  
9 did so at great personal risk is helpful and appropriate  
10 and we have no objection whatsoever to that part of the  
11 suggested amendment.

12 In relation to recording their lack of knowledge of  
13 ambulances nearby, we respectfully, again, agree with  
14 Counsel to the Inquests that this should not be  
15 included. This morning, Counsel to the Inquests  
16 advanced two reasons for that: the first, that it is not  
17 accurate; we agree, and we address this at paragraph 31  
18 of our written submissions. It is, sir, clearly  
19 important that the narrative is accurate and not  
20 misleading.

21 Second, that there is effectively a danger with its  
22 inclusion of implying potential causation in relation to  
23 the deaths when we know that the evidence is that there  
24 is none. Again, we agree.

25 We would respectfully add a third reason, which is

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1 set out at paragraphs 32 to 34 of our written  
2 submissions, and that is this: that selecting one  
3 non-causative circumstance that is therefore not  
4 a central fact in relation to these deaths risks giving  
5 it undue weight and significance, and wholly excludes  
6 and ignores the many other equally or even more relevant  
7 surrounding circumstances, and it is for all of those  
8 reasons that it should not be included, in our  
9 respectful submission.

10 In relation to Alexandre Pigeard, we have no  
11 objection to the family's suggested amendment, save that  
12 we say that the phrase "many hours later" in relation to  
13 the confirmation of death by a paramedic is also  
14 potentially misleading as it could mean very different  
15 things to different people, but tends to suggest a large  
16 number of hours had passed. We know, sir, from the  
17 evidence, that that is not the case, and it was, in  
18 fact, some, just short of three hours that had passed  
19 since the attack on Alexandre Pigeard.

20 Given we now know the time of attendance of that  
21 paramedic, we suggested in supplementary written  
22 submissions that the exact time should be recorded  
23 instead. We can, though, well understand that there may  
24 be reluctance to include exact timings in this regard,  
25 particularly where it is suggested only in relation to

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1 some deceased and not others. We have noted the absence  
 2 of specific timings in this regard in Counsel to the  
 3 Inquest’s original formulations in relation to all of  
 4 the deceased. We made this suggestion only in response  
 5 today to the suggested amendment from the family,  
 6 including that particular form of wording to which we  
 7 object.

8 We would only further observe that it is likely that  
 9 a formulation of words can be found which accurately  
 10 records that this confirmation of death was not  
 11 immediately related in time to the assistance given by  
 12 the police officer, whilst also not giving a potentially  
 13 misleading impression of the passage of a large number  
 14 of hours when we know from the evidence that there was  
 15 not. We would suggest “at a later time”, but of course,  
 16 there may be other forms of words which are acceptable.

17 We also suggest changing the word “assessed as dead  
 18 by a paramedic” to “confirmed” as this more accurately  
 19 reflects the process carried out. The formal procedure  
 20 being carried out was that of a recognition of life  
 21 extinct or ROLE, about which sir, you have heard  
 22 evidence.

23 In relation to Kirsty Boden, we have no strong  
 24 objection to the suggested amendment at paragraph 8 of  
 25 the family’s supplementary submissions. We merely note,

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1 though, that Dr Jordan, who pronounced Kirsty Boden  
 2 deceased, attended to her as an off-duty doctor and she  
 3 was therefore effectively a member of the public  
 4 attending to assist as she could, and not as a medical  
 5 professional employed and specifically tasked in the  
 6 operational response to the incident. This, therefore,  
 7 we would say, was not a formal pronouncement, it was not  
 8 carried out under any formal procedure, and Dr Jordan,  
 9 of course, did not tag Ms Boden in terms of triage or  
 10 recognition of life extinct.

11 We would therefore suggest not including the word  
 12 “formal” or “formally” in relation to Dr Jordan’s  
 13 pronouncement of life extinct, but we have no objection  
 14 to its otherwise being recorded.

15 For that reason, and for consistency of approach, we  
 16 also suggested in supplementary written submissions  
 17 that, as with Alexandre Pigeard, the time at which  
 18 a paramedic formally confirmed her as dead should also  
 19 be recorded. Again, though, if there is a desire to  
 20 avoid the use of specific exact timings in relation to  
 21 a particular deceased, this could be addressed in  
 22 a similar way as with the formulation in relation to  
 23 Alexandre Pigeard.

24 Sir, if it’s helpful, we would, of course, be  
 25 willing to further liaise with Counsel to the Inquests

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1 and counsel to the families regarding the exact proposed  
 2 wording for your narrative conclusions which is, of  
 3 course, though, we recognise, ultimately solely a matter  
 4 for you.

5 Sir, unless there’s anything else with which I can  
 6 be of assistance, those are my submissions.

7 THE CHIEF CORONER: Thank you very much.

8 MR RADCLIFFE: Sir, you’ve got our written submissions. We  
 9 didn’t intend to make any oral submissions unless  
 10 matters arose during the course of those that preceded  
 11 us. Matters haven’t, and so I don’t propose to address  
 12 you.

13 THE CHIEF CORONER: Thank you very much, Mr Radcliffe.

14 Submissions in reply by MR HOUGH QC

15 MR HOUGH: Sir, it is, perhaps, we hope, a hallmark of  
 16 independence that everyone finds something in our  
 17 submissions to disagree with.

18 Let me, however, begin by agreeing with submissions  
 19 which Mr Horwell QC made at the outset of his  
 20 representations. These Inquests have included a great  
 21 many more facts and stories than those which the legal  
 22 issues debated today require us to focus upon, but that  
 23 broader set of facts and stories must be kept well in  
 24 mind, and, as he has submitted, we heard throughout the  
 25 first month of this hearing, a range of harrowing and

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1 humbling accounts of horrific attacks and extraordinary  
 2 bravery, both by members of the public, members of the  
 3 emergency services, and not least by those who died  
 4 themselves.

5 The telling of those stories and their publication  
 6 to the wider world is a very important part of these  
 7 Inquests. Those accounts will no doubt form part of  
 8 a very detailed summing-up, which I know that you, sir,  
 9 will be delivering tomorrow and on Friday. Also  
 10 featuring in that summing-up will be positive features  
 11 of the coordination of emergency services response,  
 12 which was addressed in such detail, for example, by  
 13 Superintendent McKibbin, and nothing in the submissions  
 14 I made this morning or those which I shall make now in  
 15 reply should be taken to cast any doubt on any of those  
 16 sentiments, and I should also stress that throughout our  
 17 submissions we have not been looking casually to cast  
 18 blame, but have attempted to grapple with the legal  
 19 issues which you are required by the facts of this case  
 20 to address.

21 May I then address in turn a number of the  
 22 submissions of my learned friends, and in doing so,  
 23 I shall not go over ground which I dealt with in opening  
 24 in which I addressed preemptively a number of the points  
 25 which have been made.

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1 First of all, in response to one of Mr Patterson's  
2 submissions, I should make a few points. He submitted  
3 that one aspect of his argument is that there was  
4 an appreciable real and immediate risk to the lives of  
5 the general public before 3 June 2017, and in this  
6 respect he said that our focus upon that particular day  
7 was too narrow a focus.

8 In our submission, the difficulty of that submission  
9 is one which has been identified by Mr Sheldon QC and  
10 Mr Horwell. One needs, under the Osman principles, to  
11 identify a time at which a real and immediate risk to  
12 the public should have been appreciated and reasonable  
13 preventive action taken which might realistically have  
14 averted the risk.

15 In our submission it is difficult on Mr Patterson's  
16 argument to identify with any clarity what that time  
17 was. It cannot have been every minute over the two  
18 years of the investigation from mid-2015 to 3 June 2017,  
19 not least because there were periods when risks were  
20 reasonably assessed as reducing, on any view.

21 Our case, as you know, sir, supporting an arguable  
22 basis for engagement -- for breach of the operational  
23 duty in respect of the pre-attack investigation, is that  
24 a real and immediate risk arguably could have been  
25 appreciated on 3 June 2017 in seeing the van hire and

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1 its surrounding circumstances in the context of who the  
2 attackers were.

3 Sir, we acknowledge that that would have required  
4 some live monitoring on the day, not necessarily human  
5 live monitoring, but if one does not zero-in upon that  
6 point as representing an appreciable real and immediate  
7 risk, it is, in our submission, difficult to identify  
8 the period of time. I'll return to this when I address  
9 the submissions of some others.

10 Turning to Mr Adamson's submissions, he addressed  
11 the operational duty in the context of protective  
12 security, and he said that that operational duty was  
13 arguably and actually breached.

14 Now, once again, the problem that faces this  
15 argument is identifying a time when there was a real and  
16 immediate risk appreciable such as to require urgent  
17 action of the kind he proposes. In particular, it is  
18 important, as we've already submitted, that bridges were  
19 not regarded as a potential risk or threat target. It  
20 is also important to appreciate the significance of  
21 Mr Hone's evidence. He did not regard the risk, even  
22 after Westminster Bridge, as requiring urgent action in  
23 the form of installing hostile vehicle mitigation  
24 measures at great speed.

25 Now, I appreciate the argument is made that he

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1 didn't know of the possibility of procuring temporary  
2 measures privately, but there was nothing in his  
3 analysis which suggested that he regarded as especially  
4 urgent the need to install hostile vehicle mitigation  
5 given that he had also been proposing other mitigation  
6 measures in which he evidently had a great deal of  
7 confidence, namely the Servator deployments.

8 Mr Adamson importantly also submitted that the  
9 Westminster Bridge attack was, in his words,  
10 a gamechanger, and so it was: it triggered a series of  
11 actions about which you have heard. But it is difficult  
12 to imagine, on the systems which applied at the time,  
13 that any of the state bodies could realistically have  
14 taken action within their understood powers based on  
15 what they knew to install hostile vehicle mitigation  
16 within the time between the two attacks.

17 Sir, let me turn now to Mr Sheldon's submissions,  
18 and I've addressed a number of these points  
19 preemptively. I would just make a short response in  
20 relation to what he said about Witness L. We agree,  
21 respectfully, that Witness L was a thoughtful and  
22 impressive witness. However, of course, his judgment  
23 should not be endorsed without scrutiny, and it must be  
24 acknowledged that he was speaking for others. In this  
25 regard, he may have been bringing very considerable

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1 wisdom and experience to bear, but he was not the person  
2 in the operational chair throughout the investigation.

3 I would also make one comment in relation to  
4 Mr Sheldon's description of Lord Anderson's conclusion.  
5 Lord Anderson endorsed the process of the post-attack  
6 review as thorough, but he was careful to say that it  
7 was not within his expertise, and therefore not  
8 appropriate for him, to say that the conclusion was  
9 right.

10 THE CHIEF CORONER: He chose his words, I think, quite  
11 carefully.

12 MR HOUGH: He chose his words very carefully.

13 Let me turn, then, to Ms Leek's submissions, and if  
14 I may, I'll address these at slightly greater length.

15 She addressed the Article 2 jurisprudence first, and  
16 in our submission, the Article 2 general duty has been  
17 expressed, and deliberately expressed, by the European  
18 Court of Human Rights and by our courts in broad terms.  
19 We have set it out in one of its most authoritative  
20 formulations at paragraph 8(b) of our submissions:

21 "[A duty to] establish a framework of laws,  
22 precautions, procedures and means of enforcement which  
23 will, to the greatest extent reasonably practicable,  
24 protect life."

25 And we accept it is a high-level duty and we accept

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1 that it is to be applied fact - sensitively to each  
2 particular set of circumstances. But it is not, we  
3 submit, a duty which has been kept within narrow silos  
4 and it is not, we submit, a duty which simply cannot  
5 apply to a new set of circumstances, and it is only to  
6 the extent of applying it to a new set of circumstances  
7 that I used the word "development" in my submissions  
8 this morning.

9 We accept, of course, that the general duty does not  
10 require a disproportionate burden to be imposed upon the  
11 State. However, it does require a set of adequate  
12 systems to protect life in each different context, and  
13 Ms Leek's own submissions illustrate how it has been  
14 developed to each new context in which it has been  
15 applied.

16 She first of all addressed the case of McCann which,  
17 as she recognised, preceded recognition of the general  
18 duty and was a case concerned with the operational  
19 decisions involved in the "Death on the Rock" operation.

20 She focused in more detail on the Osman case, and in  
21 that case, the general duty was described as requiring  
22 a system of law enforcement and that was an entirely  
23 natural and predictable way for the duty to be described  
24 in the context of prevention of crime. Osman was, of  
25 course, a case about the duty of the authorities to

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1 protect an individual against the criminal act of  
2 another.

3 Nothing in the Osman case indicated that the future  
4 application of the duty would be restricted so as not to  
5 be capable of encompassing employing physical security  
6 measures against physical threats from the criminal  
7 actions of a third party.

8 Mastromatteo similarly set no high watermark and was  
9 comparably a case about protection from criminal acts.  
10 Interestingly, though, Mastromatteo involved  
11 a development and extension of Article 2 duties, there  
12 the operation duty, so that it applied beyond identified  
13 individuals and to society at large, an illustration of  
14 the ability of the courts to develop the duties in line  
15 with their central purposes.

16 The Kakoulli case concerning police operations  
17 identified at paragraph 108 the need to consider, and  
18 I quote:

19 "... the relevant legal and regulatory framework and  
20 the planning and control of the operation".

21 In our submission, sir, that had to be a gloss on  
22 the general duty, requiring the general duty, or  
23 recognising that the general duty applies to the control  
24 of police operations and the planning of those  
25 operations.

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1 At paragraph 110, the European Court referred to the  
2 fact that Article 2 duties required training to be in  
3 place for police officers who might employ lethal force.  
4 Again, we submit that that had to be a facet of the  
5 general duty rather than the operational duty.

6 Oneryildiz and Budayeva were environmental risk  
7 cases, and Ms Leek sought to persuade you that by their  
8 nature they were limited in their application to  
9 inherently dangerous sites, or perhaps to an extent in  
10 the Oneryildiz case an inherently dangerous site within  
11 the purview of the State.

12 But in our submission, the broad principle  
13 identified in Oneryildiz at paragraphs 89 to 90 is not  
14 so limited and suggests a broader scope to the Article 2  
15 duty. It resonates directly with the paragraph from  
16 Middleton which we quoted at paragraph 8(b) of our  
17 submissions.

18 Ms Leek is quite right to say that the court in that  
19 case stressed that it should not substitute its own  
20 views for those of the State, but that, as she rightly  
21 said, was a point about the margin of appreciation, not  
22 whether a general duty to have proper assistance could  
23 apply outside narrow silos of criminal justice or  
24 environmental protection.

25 The AP case which Ms Leek referred to was another

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1 prevention of crime case, essentially reiterating the  
2 points made by Osman in that context, and of course that  
3 was a case where the operational duty or a breach of the  
4 operational duty was sought to be dressed up as a breach  
5 of the general duty.

6 In our submission, none of the European cases  
7 suggests that the general duty, as formulated most  
8 clearly by the Grand Chamber in Oneryildiz, is limited  
9 to criminal law and to a narrow Rylands v Fletcher type  
10 enclave of environmental protection.

11 We should also make clear that it is a different  
12 submission to say that the duty only applies so as to  
13 require a framework of criminal law from one which says  
14 that the duty should be applied at a relatively high  
15 level of generality. We accept that the duty should be  
16 applied at a relatively high level of generality. What  
17 we do not and cannot accept is that it could not, in  
18 principle, apply to require some adequacy of systems in  
19 ensuring adequate protective security.

20 The next point that was made after the analysis of  
21 the law was that we are seeking to micromanage the  
22 duties of the Secretary of State or, indeed, of others,  
23 or that we have -- and this is a slightly --  
24 a submission perhaps slightly intentioned -- that we  
25 have not been sufficiently clear in identifying

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1 precisely what different systems ought to be applied.  
 2 So in paragraph 44 of our document we've sought to  
 3 explain in contrary terms what we regard as the  
 4 inadequacies of systems on an arguable or actual basis.  
 5 As you will see from that paragraph, there is no attempt  
 6 to micromanage the way in which systems are organised or  
 7 priorities are allocated. A concern we identify, for  
 8 example in the first of our criticisms, is that the  
 9 system which was in place imposed a straitjacket,  
 10 excluding arbitrarily sites with certain characteristics  
 11 from the consideration that would naturally be given to  
 12 priority 1 and priority 2 sites, rather than leaving it  
 13 to more nuanced or expert judgment.

14 This is not, sir, as has been suggested, a point  
 15 developed through hindsight. Our criticism was shared  
 16 by Commander Gyford at the time. She described the  
 17 system as over-rigid with an apparent degree of  
 18 frustration in the meetings which preceded the attack.  
 19 It is not a criticism directed at judgment calls  
 20 because, as you will have seen, our submissions all go  
 21 to systems.

22 Sir, we would respectfully take issue with the  
 23 suggestion that the systems reflect expert judgments,  
 24 given that Ms Nacey accepted at least some of the  
 25 deficiencies which we have identified. She, of course,

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1 was the witness who gave evidence on behalf of the OSCT.  
 2 And lest it be suggested that we have unfairly  
 3 characterised Ms Nacey's evidence, may I bring up on  
 4 screen three sections of transcript, please. First of  
 5 all, {Day31/127:5-17}, if I can ask you to read lines 5  
 6 to 17 to yourself. And then page 130 lines 12 to 20,  
 7 {Day31/130:12-20}, if I can ask you to read those to  
 8 yourself, sir.

9 THE CHIEF CORONER: Yes.

10 MR HOUGH: Then page 169, lines 3 to 12. {Day31/169:3-12}.

11 THE CHIEF CORONER: Yes.

12 MR HOUGH: So I won't provide any gloss: those are the  
 13 relevant passages, you can decide for yourself whether  
 14 those involve Ms Nacey accepting flaws in the  
 15 definitional tests.

16 Sir, the next point that was made was that the  
 17 identification of London Bridge for close attention by  
 18 PC Hone validates the procedures which are in place. In  
 19 our submission, it doesn't. That action was triggered  
 20 by an emergency order from the Deputy Assistant  
 21 Commissioner in March 2017 after the Westminster Bridge  
 22 attack which caused PC Hone to be tasked to find the  
 23 most vulnerable sites in his area. That caused him to  
 24 look beyond what had been priority 1 and priority 2  
 25 crowded places.

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1 Finally, sir, we were asked to identify a superior  
 2 system. Well, we have been careful not to do so at the  
 3 risk of being accused of micromanaging procedures.  
 4 However, all we would say is that a superior system  
 5 could perhaps be found which did not impose, as I say,  
 6 an excessive straitjacket and was capable of being  
 7 defended by the principal Home Office witness giving  
 8 evidence on the subject.

9 May I then turn to the submissions of Mr Horwell.  
 10 Mr Horwell stresses the lack of a trigger for  
 11 surveillance on 3 June 2017. I will be brief in  
 12 responding to this. We have sought to explain that  
 13 there is an arguable basis for a high level of  
 14 surveillance being required at that time based on  
 15 an accumulation of matters. First of all, background  
 16 facts which would arguably have caused the Security  
 17 Service to attach a higher risk profile to Khuram Butt.  
 18 Secondly, arguably missed investigative opportunities in  
 19 early 2017 which might have added significantly to  
 20 understanding of him and of Redouane and Zaghba. And  
 21 thirdly, and importantly, as I submitted earlier, the  
 22 need that existed after the suspension that ended in  
 23 early May to build coverage given the substantial period  
 24 of suspension and given the apparent blind spots and  
 25 limits of understanding about Khuram Butt's routine.

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1 What we have submitted is that it is arguable that  
 2 proper account of those matters might have resulted in  
 3 surveillance of a level to identify the hiring of the  
 4 van on 3 June 2017.

5 Now, at the level of whether that set of  
 6 propositions is arguable, we say that it is. At the  
 7 level of whether it succeeds, we say that it does not  
 8 succeed and we've sought, as I say, to explain the  
 9 potential argument to the extent that it can be  
 10 advanced, but also its ultimate weakness, and we have  
 11 also sought, I hope fairly, to identify the strengths in  
 12 the investigative work of MI5 and SO15, and the  
 13 successes of those bodies.

14 I should also say that we acknowledge Mr Horwell's  
 15 point that SO15 was not as involved in all of these  
 16 matters, given that the investigation was at  
 17 an intelligence phase, than was MI5.

18 Very briefly addressing the submissions of  
 19 Ms Barton QC. She has addressed the possibility of a  
 20 finding of arguable breach of the general duty by City  
 21 of London Police. I don't think that is an allegation  
 22 that anyone has put forward. For reasons we have given  
 23 we would reject any suggestion that there was a breach  
 24 of the operational duty by City of London Police.

25 We can see the force of what she says about the form

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1 of words in paragraph 63 of our document, but no doubt  
 2 you will take account of all the submissions when  
 3 formulating any form of words on the subject of  
 4 protective security.  
 5 And finally in response to submissions, as regards  
 6 Ms Simcock's submissions, we hope that it should be  
 7 possible, with her helpful offer, and the assistance of  
 8 Mr Patterson and Ms Ailes to agree means of death  
 9 narratives for all those who died.  
 10 Sir, before I conclude, may I make one final point,  
 11 and it's probably appropriate to do so at this stage  
 12 rather than at the end of the hearing. We all recognise  
 13 that the provision of Legal Aid for inquests is a matter  
 14 of policy and that difficult judgments sometimes have to  
 15 be made by those implementing the policy, and we would  
 16 simply say this about the representation which the  
 17 families have had in these inquests: that in our  
 18 respectful submission, the part played by Mr Patterson,  
 19 Ms Ailes, Mr Adamson, his juniors and their instructing  
 20 solicitors has been of great assistance in exploring the  
 21 issues and allowing the Inquests to be as rigorous as  
 22 they have been, and as all counsel have recognised they  
 23 have been.  
 24 I won't go further than that, because it isn't  
 25 appropriate for us to say more than to recognise their

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1 value to the process.  
 2 THE CHIEF CORONER: Yes. And those are sentiments which  
 3 I entirely endorse, Mr Hough.  
 4 MR HOUGH: Unless I can be of any further assistance, those  
 5 are my submissions.  
 6 THE CHIEF CORONER: No, thank you very much.  
 7 Again, I repeat, I'm extremely grateful for all of  
 8 the labours of everyone producing very detailed written  
 9 submissions and followed by brief oral submissions  
 10 today.  
 11 I've got quite a bit to think about, which I will  
 12 do, and we will sit again tomorrow morning at 9 o'clock.  
 13 My apologies in advance. It's going to be a long day  
 14 tomorrow and probably a long day on Friday.  
 15 (4.31 pm)  
 16 (The court adjourned until 9.00 am on  
 17 Thursday, 27 June 2019)

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